

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	Docket No. 13 CR 515
vs.	)	
DMITRY FIRTASH and ANDRAS	)	Chicago, Illinois
KNOPP,	)	September 11, 2017
Defendants.	)	2:08 p.m.

TRANSCRIPT OF PROCEEDINGS - Oral Argument  
BEFORE THE HONORABLE REBECCA R. PALLMEYER

APPEARANCES:

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1 THE CLERK: 13 CR 515, United States versus Dmitry  
2 Firtash and Andras Knopp for oral argument.

3 MR. BHACHU: Good afternoon, your Honor.

4 Amru Bhachu and Jonathan Robell on behalf of the  
5 United States.

6 THE COURT: Good afternoon.

7 MR. ROBELL: Good afternoon, your Honor.

8 MR. WEBB: Your Honor, Dan Webb, and Matt Carter's  
9 in the courtroom, on behalf of the Defendant Dmitry Firtash.

10 MS. GURLAND: Good morning, your Honor.

11 Carolyn Gurland here on behalf of Defendant Andras  
12 Knopp.

13 THE COURT: Good afternoon, everybody.

14 The motions to dismiss the indictment are fully  
15 briefed, and I have had a chance to review the briefs. I  
16 obviously would benefit from your oral presentations as well.

17 This is the defendants' motion, so I assume you  
18 will make the first argument, and we will hear then from the  
19 government. I will certainly allow time for rebuttal as  
20 well.

21 MR. BHACHU: May I be seated, Judge?

22 THE COURT: Sure.

23 MR. BHACHU: Thank you.

24 MR. WEBB: Your Honor, Dan Webb on behalf of the  
25 Defendant Dmitry Firtash.

1           Your Honor, this is our -- the motion was filed by  
2     Dmitry Firtash on behalf -- by my firm on behalf of Dmitry  
3     Firtash, and Ms. Gurland filed a motion on behalf of her  
4     client, Mr. Andras Knopp.

5           THE COURT: Right.

6           MR. WEBB: The entire motion is based on Rule 12(b)  
7     and the fact that we believe the indictment fails to plead  
8     adequate facts to establish the requirement of venue in the  
9     Northern District of Illinois or jurisdiction in the United  
10    States.

11           As your Honor, I think, can tell from looking at  
12    the reply brief, there are actually five issues that have now  
13    been briefed before your Honor. And because we filed joint  
14    briefs and because we are adopting each other's arguments, to  
15    avoid us in any way duplicating arguments on issues,  
16    Ms. Gurland and I have simply split the issues up, if that's  
17    okay with your Honor.

18           THE COURT: Sure.

19           MR. WEBB: I will address the first two issues in  
20    the brief dealing with ripeness and venue, and Ms. Gurland  
21    will address the last three issues that deal with  
22    jurisdiction, so that we avoid any possibility of taking up  
23    the Court's time unnecessarily with duplication.

24           THE COURT: Before you dive in, let me ask, is it  
25    your view on behalf of the defendants that venue is not

1 proper anywhere in the United States or just not proper in  
2 the Northern District of Illinois?

3 MR. WEBB: Northern District of Illinois. I'm not  
4 going to -- there may be some other venue that they may plead  
5 venue in, but they haven't plead -- yes, our position is they  
6 have not adequately pled venue in the Northern District of  
7 Illinois. That is our position.

8 THE COURT: Okay.

9 MR. WEBB: Now, your Honor, at a high level, I  
10 think the Court could say, you folks are coming in here  
11 telling me that the government has not adequately pled venue  
12 and has not adequately pled jurisdiction in the United  
13 States, and those are such fundamental, constitutionally  
14 required issues to be pled in an indictment, why would they  
15 not be here?

16 Let me just start off by saying, your Honor, there  
17 are certain unique and special facts about the defendants  
18 that make it very difficult -- in fact, I believe  
19 impossible -- for the government to plead venue in the  
20 Northern District of Illinois or jurisdiction in the United  
21 States.

22 Number two, there is actually special and unique  
23 facts about the nature of this crime that's pled in the  
24 indictment that creates the same problems of being able to  
25 plead venue in the Northern District of Illinois or

1 jurisdiction in the United States.

2 First my client, Mr. Firtash. Four fundamental  
3 facts about venue and jurisdiction.

4 Number one, Mr. Firtash is not a United States  
5 citizen. He is a citizen of the Ukraine.

6 Number two, Mr. Firtash has never, ever been in the  
7 United States at any time. He has never set foot in the  
8 United States in his life. He has never asked for a visa to  
9 come to the U.S. He has, period, never been in the United  
10 States.

11 Number three, at no time has Mr. Firtash or any of  
12 his companies ever done any business in the United States.  
13 None.

14 And the fourth fact is, this indictment does not  
15 even allege a single act performed by Mr. Firtash in the  
16 United States that has any connection to the crimes charged  
17 in this indictment.

18 So those unique facts about my client, I think,  
19 explain why they can't plead venue or jurisdiction.

20 But it is compounded by the nature of the crime,  
21 your Honor, because, as far as the unique and special nature  
22 of this crime and creating impossibilities for the government  
23 to plead venue and jurisdiction, the charges against  
24 Mr. Firtash all relate -- all of them relate to a plan to  
25 bribe public officials not in the United States but in the

1 nation of India. And the plan dealt with a mining project  
2 that was planned to take place entirely within the nation of  
3 India by foreign companies that have no connection to the  
4 United States.

5 In fact, as far as the crime itself that's pled --  
6 it may not be totally obvious the first time you look at this  
7 indictment, as much as we've studied it, but I just point out  
8 to your Honor, this crime doesn't even plead bribery in  
9 India.

10 They crime pled -- they plead three conspiracies,  
11 your Honor. There is basically three alleged conspiracies  
12 pled in the indictment, but there is no -- there is no  
13 allegation that this plan ever led to any Indian public  
14 official actually ever being paid or receiving any bribes.

15 They do allege there was a plan to do so, but the  
16 indictment, when you read it, they didn't charge any foreign  
17 corrupt -- they pleaded conspiracy to violate the Foreign  
18 Corrupt Practices Act, but I can't see anywhere in the  
19 indictment where they plead an actual Foreign Corrupt  
20 Practices Act substantive violation.

21 And they don't even plead -- they don't plead on  
22 this indictment events that occurred that would be evidence  
23 or show that there is an allegation that bribes were actually  
24 paid to any Indian public official.

25 The government may -- if I'm wrong about that, they

1 can correct it, but that's my understanding when I read the  
2 indictment.

3 So when you combine kind of all those facts at a  
4 high level together, your Honor, I believe it explains why  
5 the government is failing in these basic issues in pleading  
6 venue in the Northern District of Illinois and jurisdiction  
7 in the United States.

8 Now let me go through the first two issues in the  
9 brief.

10 First is ripeness. At the beginning of the  
11 government's argument in its response brief, your Honor, the  
12 government's very first argument is that the defendants'  
13 motion to dismiss is not ripe for you to decide now as a  
14 matter of what they call international comity. Let me talk  
15 about that just briefly.

16 In the ripeness argument, the government makes the  
17 argument that there are certain U.S. cases that seem to  
18 suggest that, as part of the concept of international comity,  
19 a U.S. court should not address a motion before you that  
20 challenges whether the extraditing state has the power or  
21 authority to order extradition of the defendant back to the  
22 United States to face charges.

23 The idea there, your Honor, is, you shouldn't do  
24 that because you might do something that would -- that might  
25 be basically a -- "dueling proceedings" is the term that the



1 government uses -- that you would decide some dueling  
2 proceedings here in which you would telling the Austrian  
3 authorities, well, you can't do this. That's not here.

4 We have not raised any issue at all about the U.S.  
5 treaty with Austria. We're not alleging -- we are making no  
6 arguments about whether or not Mr. Firtash or Mr. Knopp can  
7 be extradited from Austria, which is why, quite frankly, I  
8 have never understood the government's argument on this. I  
9 may be missing something, but when I read those cases over,  
10 all of them involve where I would be raising here in front of  
11 your Honor some issue, asking you to decide about whether,  
12 under the treaty, Mr. Firtash could be extradited back.  
13 There is just no -- this is a motion to dismiss because of  
14 venue and jurisdiction and has nothing to do with dual  
15 proceedings.

16 And I should emphasize, by the way, all the  
17 research we have done, I can't find a single case anywhere in  
18 the U.S. that in any way suggested that a motion to dismiss  
19 for lack of venue and jurisdiction is somehow a dueling  
20 proceeding that under principles of international comity  
21 would prevent you from ruling on this issue.

22 Now, I think it's fair for your Honor to say,  
23 "Well, why are you here now, Mr. Webb?" I will address it  
24 briefly.

25 Let me just give you a current statement from me as

1 to the current status of extradition in Austria and answer  
2 any questions you have about it.

3 And, by the way, we have an Austrian extradition  
4 lawyer here, who has been handling the matter in Austria,  
5 named Mr. Otto Dietrich. I don't know that you will need to  
6 ask him any questions, but he is here.

7 The bottom line is the following: The bottom line  
8 is that, for several years, I have believed, based on what I  
9 learned from the Austrian lawyers, that, based on laws and  
10 facts, that Mr. Firtash I thought would likely not be  
11 extradited back to the U.S.

12 In fact, there was actually a trial in Austria in  
13 which they litigated the whole issue of extradition; and, for  
14 a variety of reasons, the Austrian court in April of 2015,  
15 the trial court, ruled that Mr. Firtash would not be able to  
16 be extradited back to the United States.

17 Things have changed now. And based on where things  
18 stand today, the bottom line is that Mr. Firtash, I believe,  
19 is highly likely to be extradited back to the United States.  
20 I can't give you an exact date because of uncertainties about  
21 certain matters, but I will tell you that it could happen  
22 within weeks or certainly months.

23 Just briefly where it stands is that after  
24 Mr. Firtash won at the trial level -- after he won and he was  
25 not being extradited, so I didn't see any reason to file a

1 motion here, because he wasn't going to be extradited. What  
2 happened then is under -- he filed an appeal and that appeal  
3 went forward.

4 THE COURT: Why would he have appealed?

5 MR. WEBB: I'm sorry.

6 THE COURT: You mean --

7 MR. WEBB: The Austrian government filed -- that's  
8 my mistake, and I apologize.

9 The Austrian prosecutors filed an appeal  
10 challenging the trial court's decision. And on February 21st  
11 of this year, 2017 -- which actually didn't become final  
12 until sometime in March, I believe -- the Austrian appellate  
13 court disagreed with the trial court and entered -- after a  
14 hearing, entered a ruling that Mr. Firtash was ordered  
15 extradited back to the United States.

16 Now under Austrian procedural law, that was the end  
17 of the road for Mr. Firtash in the Austrian courts as a  
18 matter of appellate rights.

19 Mr. Firtash did file this thing called a special  
20 extraordinary remedy writ with the Supreme Court of Austria  
21 asking the Supreme Court to review the case and review the  
22 decision by the appellate court.

23 However, that's simply a discretionary  
24 extraordinary writ, and there is no stay. And so the  
25 Ministry of Justice, as far as I know, under the law could

1 have extradited Mr. Firtash in March or April of this year.

2 However -- however, there was another wrinkle.

3 While this case was pending, Spain, the nation of Spain filed  
4 an extradition request for Mr. Firtash. Under Austrian law,  
5 as long as there were two competing extradition requests by  
6 two different sovereign nations, the Ministry of Justice is  
7 not allowed to pick and choose which one he will grant. So  
8 the Ministry of Justice in Austria has to wait for the courts  
9 to resolve this.

10 Well, Mr. Firtash's case was resolved by the  
11 appellate court, at least as a matter of right, and the  
12 Supreme Court has not entered any indication they are going  
13 to hear the case. But the Spain case was alive up until  
14 August 29th, just ten days ago.

15 On August 29th, an Austrian trial court denied the  
16 Spanish request for extradition, and that ends the Spanish  
17 case, although the prosecutor in Austria could appeal that  
18 Spanish ruling by the trial judge to the appellate court.  
19 And I think that decision has to be made in the very near  
20 future. I don't know what's going to happen there. I have  
21 heard speculation that the prosecutor might appeal. So it  
22 could be several more weeks. It could be several more  
23 months.

24 But the fact is, I think it's fair to say that  
25 Mr. Firtash is clearly at significant risk of being

1 extradited, which brought us to come before your Honor,  
2 because if venue -- if I'm right and venue and jurisdiction  
3 are not proper in the U.S., it would be an enormous injustice  
4 to my client to make him go into U.S. marshal custody, bring  
5 him back to the U.S., put him in prison waiting for a bond  
6 hearing in front of your Honor.

7 And if there is no venue here and if there is no  
8 jurisdiction, that should not happen, because that whole  
9 purpose of these -- venue is to make sure that it's proper to  
10 have somebody brought here. And if it's not proper to have  
11 him brought here, then we should resolve that issue now.

12 So that's why I am here now. Before, I thought  
13 there was no need to, obviously, take up your time. You  
14 always will take time for anything, but a complex  
15 jurisdiction and venue motion I thought was probably not  
16 going to be necessary, and now it looks like it's necessary.  
17 That's what brought us here today.

18 So on the issue of ripeness, this is about as ripe  
19 as it can get, because it's going to happen, and it's going  
20 to happen pretty quickly.

21 Now, let me go to venue, because this is -- I am  
22 going to walk through this and try to explain it concisely to  
23 your Honor as to what the problem is.

24 I am going to walk through -- there's only three  
25 paragraphs in the indictment that allege any act occurring in

1 the Northern District of Illinois. I am going to walk  
2 through those, because, under the law, those pled acts do not  
3 satisfy the requirements of U.S. law on what has to be pled  
4 for venue.

5 Now, there's some legal principles, and  
6 surprisingly, there is very little, if any, difference  
7 between the defendants and the government on the legal  
8 principles you should apply in deciding venue.

9 First of all, the government and the defendant  
10 agree that venue is a constitutional requirement, which  
11 requires that part of the crime charged must have been  
12 committed in the Northern District of Illinois or else there  
13 is not venue here.

14 The government and the defendant also agree that  
15 the vast majority of this case is a conspiracy case. There  
16 actually are three separate conspiracies charged in the  
17 indictment.

18 Count I is a RICO conspiracy.

19 Count II are travel acts in furtherance of a money  
20 laundering conspiracy.

21 And Count V is a 371 conspiracy to violate the  
22 Foreign Corrupt Practices Act.

23 So the government and the defense agree that if I  
24 object to venue and contend that it's not pled, I have to  
25 file this motion under 12(b), because 12(b)(3) on its face

1 says that if I'm going to challenge venue at trial, I need to  
2 challenge it now for your Honor to decide whether or not it's  
3 been properly alleged or else I waive it. And therefore,  
4 there is no dispute about that, that venue should be raised  
5 now and not at some later point in time.

6 Number four, the government and I agree that  
7 because of the conspiracies being the heart of this  
8 indictment, under the case law, the government must plead and  
9 set forth at least one overt act in furtherance of the  
10 conspiracy that actually occurred in the Northern District of  
11 Illinois in order to make venue proper in the Northern  
12 District of Illinois.

13 And we agree with the government that you could  
14 have -- a conspiracy could have multiple federal districts  
15 where overt acts were carried out in, and so a conspiracy can  
16 clearly be brought in multiple jurisdictions. I am not  
17 arguing that.

18 But if they are going to proceed on it in Chicago,  
19 in the Northern District of Illinois, I think the  
20 government -- the cases are cited on Page 22 of the  
21 government's brief, where they concede that they must plead  
22 and then prove actual acts in the Northern District of  
23 Illinois that are in furtherance of the pled conspiracy. And  
24 they cite three Seventh Circuit cases that stand for that  
25 proposition.

1               So we agree on that.

2               The government also agrees with me on the next  
3 critical issue, which is that when you plead the overt act in  
4 furtherance of the conspiracy, it must -- venue must be pled  
5 by pleading specific facts, which, if proven at trial, would  
6 establish venue.

7               The lead case there is the case in the Seventh  
8 Circuit called the *Bohle*, B-o-h-l-e, case. It's a Seventh  
9 Circuit case. The government cites it on Page 27 of its  
10 brief. That case states very directly venue must -- because  
11 it's a constitutional requirement of venue, it has to be pled  
12 by setting forth specific facts, which, if proven at trial,  
13 would establish venue.

14              In fact, in that *Bohle* case, your Honor, what  
15 happened is that the defendant didn't raise venue pretrial in  
16 a motion under 12(b).

17              The Court later -- the Seventh Circuit said venue  
18 was not pled -- venue was pled with specific facts, but that  
19 was not sufficient. If you prove those facts, you would not  
20 have venue in the Northern District of Indiana. And  
21 therefore, when you didn't raise it, Mr. Defendant, you  
22 waived it.

23              So everyone -- I don't think there is any dispute  
24 that the government has got to plead specific facts in order  
25 to have a -- to have venue for the conspiracy in Chicago, in



1 the Northern District of Illinois.

2 So there are three paragraphs in the indictment  
3 that -- may I hand up a copy of the indictment to your Honor?

4 (Document tendered.)

5 MR. WEBB: Your Honor, the overt acts in  
6 furtherance of the conspiracy actually begin on Page 11. I  
7 believe that's how I read the government's indictment. And  
8 they go up to Page 17. No. They actually go further than  
9 that. They go all the way up to Page 19. I apologize.

10 So I went through the indictment to find any  
11 paragraph that sets forth any act by anyone in the Northern  
12 District of Illinois, and I only see three acts that are  
13 pled.

14 The first one is on Page 17. And if you go to Page  
15 17 of the indictment, at the bottom you have little Roman  
16 numeral iv. And I will just quickly read it. It says, on or  
17 about July 5th, 2009, Lal traveled from Chicago to  
18 Greensboro, North Carolina, and thereafter, after getting to  
19 North Carolina, informed Knopp about Individual C's planned  
20 meeting with an Indian public official about bribery and then  
21 later instructed a subordinate to pay fees to professionals  
22 who were assisting with the project.

23 So that paragraph clearly on its face -- Lal is a  
24 named defendant. He is listed as a coconspirator. But that  
25 doesn't plead that Lal did anything at all in the Northern

1 District of Illinois in furtherance of the conspiracy. They  
2 contend that he traveled to North Carolina and then did  
3 something in North Carolina.

4 Now, I believe that's because LaI was simply going  
5 through Chicago on a plane, I think. All I can do is accept  
6 what's in the indictment.

7 But they plead that on July 5th, he is traveling  
8 from or through Chicago. And then, when he gets to North  
9 Carolina, sometime after that -- I don't know when, a month,  
10 a day, a year -- he does two acts, but those acts are not in  
11 Chicago and cannot bring venue to Chicago.

12 The next mention of Chicago or the Northern  
13 District of Illinois, your Honor, is on Page 18 of the  
14 indictment, which is in the middle of the page. It's little  
15 Roman numeral vii, in the middle of the page, on Page 18,  
16 which has that on about August 16th, LaI traveled from  
17 Chicago to Greensboro, North Carolina, and thereafter  
18 instructed a subordinate to transfer funds used to pay  
19 publish officials and -- same type of language.

20 Again -- which again, there is no allegation that  
21 LaI performed any act in Chicago in furtherance of the  
22 conspiracy at all and is alleged to have done acts somewhere  
23 else. I'm not even sure where, because it just says  
24 "thereafter." So that's clearly not -- that's not an act in  
25 the Northern District of Illinois.

1           Now, the only other paragraph that's left is  
2 Paragraph H on Page 19. If you go to Page 19 and you get to  
3 Paragraph H, you have that long paragraph there, and your  
4 Honor can read it.

5           The essence of this paragraph is that one or more  
6 of the coconspirators used cell phones somewhere. We don't  
7 know where they used the cell phones. Don't know if they  
8 used them in the Northern District of Illinois. But they  
9 used cell phones with the intent to promote money laundering  
10 and then later carried out acts to facilitate money  
11 laundering somewhere. We don't know where.

12           But there is no allegation whatsoever, your Honor,  
13 that those acts were in furtherance of a money laundering  
14 conspiracy, that they occurred in the Northern District of  
15 Illinois.

16           The only thing that's alleged -- they do allege  
17 that at some point one of the cellular telephones was located  
18 in Chicago, Illinois, but that's all they say. I mean,  
19 having a cell phone in the Northern District of Illinois  
20 could not be an act in furtherance of a conspiracy.

21           So the government clearly has not set forth -- and,  
22 by the way, that paragraph, Paragraph H -- at least the other  
23 two paragraphs do at least allege some facts that occurred  
24 elsewhere that I think you could say are acts that, on the  
25 face of it, could be in furtherance of the conspiracy.

1 Paragraph H doesn't even allege -- they just allege  
2 the statutory language that thereafter someone promoted and  
3 managed and carried out acts in connection with the  
4 activities of the coconspirators. And that's not what the  
5 case law says.

6 Under *Bohle*, you need to be told what are the acts  
7 you are going to prove at trial, with specific facts, to see  
8 if they actually occurred. And if you could prove them at  
9 trial, would that be in furtherance of the conspiracy?

10 So Paragraph H does not add to the government's  
11 ability to prove that.

12 So therefore, your Honor, if the government --  
13 right now, based on this indictment, under the law that I  
14 just discussed with your Honor, there is no proper venue pled  
15 in this indictment which, your Honor could say, if proven at  
16 trial, would establish venue in the United States.

17 Now, the government says, well, we have some other  
18 arguments. And I will touch upon them briefly.

19 They say, well, you know, there is a money  
20 laundering statute, 1956, that has a specific venue pled --  
21 set forth in the statute. The statute is 18 USC 1956. But  
22 the venue provision is the one I have been talking about.  
23 That statute pleads that venue needs to be a conspiracy that  
24 has to be in the district where an act in furtherance of the  
25 conspiracy took place.

1 Well, that's the very element that I am saying has  
2 to be in every conspiracy under Seventh Circuit law. So I  
3 have already talked about that.

4 Count II is the money laundering Section 1956  
5 discussion and conspiracy. And there is nothing at all that  
6 pleads any act in furtherance of the conspiracy.

7 The only three acts are the same three acts that I  
8 just walked through with your Honor.

9 Now, the government at least -- I'm not sure  
10 about -- the government at some point in its brief, your  
11 Honor, I thought was trying to say, well, let's just wait and  
12 see what we prove at trial, and don't worry about venue now.  
13 They may or may not be making that argument.

14 But, your Honor, that argument cannot fly.  
15 12(b)(3) of the Federal Rules of Civil Procedure require I  
16 have to raise it now. And that *Bohle* case clearly makes it  
17 clear that they have to plead the facts now that they are  
18 going to prove at trial. And if they are not there, the  
19 indictment should be dismissed.

20 The government also makes an argument at some point  
21 in its brief that, as long as they just use the language from  
22 the statute, that the acts occurred in the Northern District  
23 of Illinois, and they say, we have done that. We have used  
24 that cookie-cutter language that all the acts occurred in the  
25 Northern District of Illinois -- all the crimes occurred in

1 the Northern District of Illinois.

2 Your Honor, there is not a single Seventh Circuit  
3 case that says that. The *Bohle* case says exactly the  
4 opposite, and so do all the other cases, which say that you  
5 have to have an act in furtherance of the conspiracy pled in  
6 the indictment. You can't just say, well, the crime occurred  
7 somehow in some way. We all agree that you can have venue in  
8 the Northern District of Illinois, even if they only have one  
9 overt act in furtherance -- pled with specific facts that  
10 your Honor can judge and say, that, if you proved at trial,  
11 would be sufficient. And they haven't done that. Pleading  
12 that occurred in the Northern District of Illinois clearly is  
13 not correct.

14 And, by the way, of all the circuits -- the  
15 circuits that have actually taken venue seriously, I think  
16 the Seventh Circuit may have -- if you look at the cases we  
17 cite in our brief -- the *Radley* case, the *Muhammad* case.

18 In the *Radley* case, your Honor, Judge Castillo took  
19 a case -- this is decided in 2008 -- called the *Radley* case,  
20 and he traces the constitutional requirements and the  
21 importance of a defendant to have a right to have his case  
22 charged properly in the judicial district where there is  
23 proper venue.

24 And the court observed -- and I quote -- "These  
25 constitutional venue guarantees are more than just procedural

1 technicalities. They touch closely on the administration of  
2 criminal justice and public confidence in our criminal  
3 justice system."

4 And I respectfully suggest to your Honor, the idea  
5 that we set aside all this law in the Seventh Circuit and  
6 simply allow the government to say, well, we have said the  
7 Northern District of Illinois. We haven't pled any facts  
8 that, if proven at trial, show that, that that's all we need.

9 So respectfully, your Honor, on this issue of  
10 venue, because they haven't pled venue with specific facts  
11 that are required by the Seventh Circuit, they haven't set  
12 forth acts in furtherance of the conspiracy that occurred in  
13 the Northern District of Illinois, as a result, this  
14 indictment should be dismissed.

15 And if your Honor has no questions, I will have  
16 Ms. Gurland address the other issues, if that's okay with  
17 your Honor.

18 THE COURT: Okay. Thank you.

19 Ms. Gurland.

20 MS. GURLAND: Good afternoon, your Honor.

21 I am here on behalf of Andras Knopp. He is a  
22 79-year-old Hungarian citizen. Like the specific facts  
23 mentioned by Mr. Webb in connection with Mr. Firtash, he is  
24 not a U.S. citizen, and he doesn't have any businesses in the  
25 United States.

1           Based on the indictment, there are no allegations  
2           that he ever entered the United States of America in  
3           connection with any act charged in this indictment.

4           Mr. Knopp, contrary to some suggestions in the  
5           government's response, has been an active participant in both  
6           the preparation and presentation of this motion.

7           The government responds -- states that this case is  
8           just an inconvenience to Mr. Knopp because he can't travel  
9           anymore at a whim. I would just respectfully submit that  
10          that's unfair to Mr. Knopp, because he finds himself subject  
11          to a five-count indictment in this district that he believes  
12          is impermissible under the law. And it's for that reason  
13          that I am here on his behalf in tandem with Winston and  
14          Mr. Webb, Mr. Carter to address these legal issues.

15          I will be arguing from our brief and, just  
16          corresponding to the order in the reply brief --

17          THE COURT: Right.

18          MS. GURLAND: -- Points 3 and 4 and 5, picking up  
19          where Mr. Webb left off.

20          So the first argument is that Count I, the alleged  
21          RICO conspiracy, is an impermissible extraterritorial  
22          application of United States law, because there is not a  
23          significant direct effect on U.S. commerce and because none  
24          of the pattern acts on which the RICO conspiracy charge is  
25          based can be applied extraterritorial.



1           And those pattern acts, your Honor, are the Count  
2   II, which is the money laundering conspiracy; and Counts III  
3   and IV, which allege Travel Act violations.

4           The second major topic that I will cover is that  
5   the Foreign Corrupt Practices Act, Count V, does not apply  
6   extraterritorially under the clear terms of the FCPA statute,  
7   which does not apply to either Mr. Knopp or Mr. Firtash. And  
8   it would be my argument that it would be impermissible to  
9   extend the application beyond the terms of the FCPA statute  
10   by charging a conspiracy.

11           And finally I will address that the prosecution is,  
12   in our view, a violation of both defendants' due process  
13   rights.

14           I will discuss each of these in order, but first I  
15   would like to raise two main principles that I think govern  
16   all of these arguments.

17           The chief principle, your Honor, is that there is a  
18   presumption against the extraterritorial application of  
19   United States law. It is a basic premise of U.S. law. It  
20   was articulated in the Supreme Court case *United States v.*  
21   *Morrison* and most recently specifically affirmed in the  
22   2016 Supreme Court case *RJR Nabisco*.

23           It is the defense view that the government does not  
24   adequately acknowledge and appreciate that basic principle of  
25   U.S. law.

1           Secondly, your Honor, the government's response in  
2 the briefing in this case describes a very different case  
3 than the one that was set forth in the indictment. The  
4 response claims that this case is a textbook example of a  
5 transnational criminal enterprise.

6           But the indictment allegations are not that. They  
7 are that a group of foreign nationals participated in a  
8 business venture to mine ilmenite in India and to then refine  
9 it into various components that would be sold thereafter, one  
10 of which was titanium sponge. The indictment nowhere alleges  
11 that the Indian project itself was anything less than a  
12 legitimate exercise of a business venture.

13           The allegations of wrongdoing against the  
14 defendants in general and against Mr. Knopp and Firtash in  
15 particular are that the six defendants participated in a  
16 scheme in which it's alleged that they agreed to bribe Indian  
17 officials in India in connection with this Indian project.

18           But, your Honor, I believe that it's inaccurate and  
19 unfair to say that this is a transnational criminal  
20 enterprise. In fact, this is no different from the mine-run  
21 of FCPA cases in which some large U.S. transnational company  
22 that does completely legitimate business is alleged to have  
23 gone overseas in connection with some project overseas and to  
24 have entered into a scheme to bribe somebody.

25           Those allegations, when made against a U.S.

1 company, would never be seen as converting every operation of  
2 that large U.S. transnational enterprise into a criminal  
3 organized crime violation. And I would submit, your Honor,  
4 that if we were just looking at the allegations in the  
5 indictment, there is no reason that it should do so in this  
6 case either.

7           The allegation of bribes in India, in other words,  
8 doesn't convert legitimate business done in India, in terms  
9 of mining and refining and selling product, into a criminal  
10 enterprise.

11           So I would submit this is not a textbook example of  
12 a transnational criminal enterprise, as the government says.  
13 It is, rather, a textbook example of a case without any real  
14 connection to the United States, which violates these  
15 long-standing Supreme Court principles against  
16 extraterritorial prosecutions.

17           So turning to the three specific arguments, your  
18 Honor. The first centers on Count I, the RICO conspiracy.

19           The RICO conspiracy, under the facts alleged in the  
20 indictment, is an impermissible extraterritorial application  
21 of the RICO statute.

22           And the first point, your Honor, the general point  
23 that I want to make about RICO is that it really is the case  
24 that -- looking at the *RJR* case, the 2016 Supreme Court case,  
25 that was really kind of a watershed event in RICO

1 extraterritorial jurisprudence, because before then, the  
2 cases went one way and cases went another as to whether or  
3 not RICO could apply extraterritorially.

4 In that case, the Supreme Court said RICO can apply  
5 extraterritorially. However, there is a limit. It's limited  
6 in its extraterritorial application to the extent to which  
7 the pattern acts underlying the RICO claim can be applied  
8 extraterritorially.

9 So that was the sort of seismic shift in *RJR*, and  
10 it really did change jurisprudence on this issue.

11 But importantly, the *RJR* case specifically  
12 reiterated this general U.S. principle that there is a  
13 presumption against the extraterritorial application of U.S.  
14 law. It said it, it cited the cases that form the basis of  
15 that presumption, and it reaffirmed them.

16 The last general point, your Honor, is that the  
17 government's briefing says that, because somehow they have  
18 charged this 1962(d) violation, which Count I is under  
19 1962(d), which is the RICO conspiracy, that maybe it's the  
20 case that all of this analysis in *RJR Nabisco* shouldn't apply  
21 because we are dealing with conspiracy.

22 But as it turns out, your Honor, in the *RJR* case,  
23 one of the allegations was a RICO conspiracy, and the court  
24 actually addressed that and said -- although they didn't  
25 engage in a lengthy discussion, they said that they were

1 going to proceed and assume, without discussion, that the  
2 RICO conspiracy, 1962(d), actually tracks the provisions  
3 underlying the conspiracy.

4 So under *RJR*, then, your Honor, RICO can only apply  
5 to extraterritorial conduct to the same extent to which the  
6 pattern acts do.

7 And the RICO -- and I will come back to it, but the  
8 *RJR* case also, in addition to making that holding, provided  
9 some specific guidance as to how should a court analyze  
10 whether or not the pattern acts themselves are able to be  
11 applied extraterritorially.

12 The first component is just the general commerce  
13 component. Under *RJR*, there is a requirement that RICO  
14 conspiracy allegations in an indictment must present  
15 allegations that affect in a significant way commerce  
16 directly effected to the U.S.

17 And incidentally, your Honor, even aside from the  
18 pattern act analysis that I will cover after this, this would  
19 be an independent reason, under the law, to dismiss the RICO  
20 conspiracy.

21 If your Honor finds that there is not sufficient  
22 allegations of a significant effect on commerce directly  
23 affecting the U.S., that's enough to dismiss Count I. This  
24 requirement comes directly from *RJR*.

25 In the government's response, they claim that all

1 that is required in the indictment is just to say that there  
2 is an effect on commerce and they really don't have to do any  
3 more. But, your Honor, under the law, they are incorrect.

4 What the indictment has to do and what the  
5 government has failed to do in the indictment is to plead  
6 facts that would establish the required effect on U.S.  
7 commerce. They haven't done that. The government has not --  
8 it's not enough, actually, to just assert that there has been  
9 an effect on commerce without facts.

10 And how do we know this? We know this because the  
11 *RJR* case itself and other cases that are cited in the  
12 briefs -- this *Hawit* case, the *Bank Julius* case that the  
13 government cites, the *Prevezon* case -- all of those cases  
14 arise not from a challenge to a result after a trial. They  
15 actually arise from a motion to dismiss, either a motion to  
16 dismiss an indictment or a motion to dismiss a complaint.

17 And in analyzing this issue of the application of  
18 RICO, the courts don't just accept the assertion that it's  
19 been made in a complaint or an indictment. They actually  
20 analyze the facts. And that's what, we would submit, must  
21 also -- must be done under the law and should be done in this  
22 case.

23 The allegation in the indictment that the  
24 government claims establishes the required effect on U.S.  
25 commerce principally is that Company A, which is a U.S.

1 company, intended to a buy a product, a by-product from the  
2 mining and refining operation, titanium sponge, from the  
3 project.

4 The defense argument is not that this never  
5 happened. Although, as it turned out, the project didn't  
6 progress far enough, and actually Company A never really  
7 bought anything.

8 But that's not our point, because when the  
9 government says, look, it's a conspiracy; it's an allegation;  
10 we have got to assume that everything in the indictment did  
11 happen, and you have got to assume that, if there was an  
12 agreement to do something, that's the same as doing it, they  
13 are absolutely right. Under general conspiracy law, they are  
14 right. And we don't take any issue with any of that.

15 Our assertion, though, is that, even if Company A  
16 had bought this titanium sponge, even if they had done it,  
17 that this would not establish the direct significant effect  
18 on U.S. commerce required by the *RJR* case. And that's for  
19 several reasons, your Honor.

20 First, there is no allegation that Company A was  
21 involved in any bribery scheme. It has never been alleged  
22 that they were aware of any bribery scheme, affected by any  
23 bribery scheme.

24 There is also no allegation that the price that  
25 they had agreed to pay for titanium sponge was affected in

1 any way by this alleged bribery scheme. There is no  
2 allegation of that.

3 In the government's response brief, they say that  
4 it is an effect on U.S. commerce because there was an  
5 agreement to -- and I think this is close to a direct quote.  
6 There was an agreement to introduce illegally obtained  
7 titanium sponge into the U.S. market. And that was an  
8 allegation that seems to be going directly to this allegation  
9 of commerce.

10 However, that's also not what was charged in the  
11 indictment. There is actually no allegation in the  
12 indictment that titanium sponge was actually ever going to  
13 come to the United States.

14 Company A, although I won't say who it is, it's a  
15 large operation. It has operations all over the world.  
16 There is no necessity that, because Company A bought  
17 something, that it was necessarily going to be used or  
18 transported into the United States at all.

19 And that's at -- the allegation about Company A is  
20 at Page 3, Paragraph E. We can see that all that they have  
21 alleged, that there was a memorandum of understanding to  
22 maybe supply titanium sponge, nothing about where it was to  
23 come or where it was to be distributed.

24 In effect, then, the government's position would be  
25 that any time that there is a scheme in a foreign country



1 that can be in any way connected to when a U.S. company or,  
2 presumably, even a U.S. consumer was going to buy something  
3 that was affected by this scheme, that there would be U.S.  
4 jurisdiction. And that would be even if the thing that the  
5 consumer or the company bought was never even brought into  
6 the United States of America.

7 I just submit to your Honor that that would render  
8 this limitation in the *RJR* case absolutely meaningless, and  
9 it can't be the law.

10 The government also, in terms of the commerce --  
11 this commerce -- this prong of the RICO requirement, refers  
12 to meetings in the United States. I mean, there are a  
13 total -- in the indictment there are a total of four meetings  
14 in the United States, two with Defendant Gevorgyan. That's  
15 at Page 17, i and ii; and then one in -- one with Lal, and  
16 that's on Page 18, number v.

17 But there can't, I don't think, be a serious  
18 allegation that these distinct, limited meetings in the  
19 United States could have an effect on the United States  
20 commerce.

21 And again, to have this sort of approach toward the  
22 significant and direct effect on U.S. commerce requirement in  
23 *RJR Nabisco* I think would read the requirement into oblivion.  
24 For this reason, the allegations in the indictment don't  
25 satisfy that test.

1           The second reason that the RICO count, Count I of  
2     the indictment, is an impermissible extraterritorial  
3     application is that the first of the pattern acts on which it  
4     was based, which is the money laundering conspiracy, cannot  
5     be prosecuted -- the underlying money laundering conspiracy  
6     cannot be prosecuted extraterritorially.

7           The government's position, as I understand it from  
8     the brief, is that, under generalized conspiracy law, they  
9     cite this *Gleazier* case. They say that all they have to  
10    allege are sort of types of racketeering acts and they don't  
11    have to allege the completed conduct.

12          Your Honor, we agree with that. We agree that  
13    under *Gleazier* -- and we don't take any issue with anything  
14    that they have said in their briefs about the application of  
15    domestic conspiracy law. And it gives the government broad  
16    latitude, and everything they said about the law is accurate.

17          But where we take issue with the government's  
18    briefing is that they try to claim that, because of these  
19    domestic conspiracy principles, that that means that we don't  
20    really have to engage in the *RJR* extraterritorial analysis.  
21    And that's where we take issue, because the *RJR* Supreme Court  
22    analysis of extraterritoriality is the law, and the  
23    government has not adequately addressed the law in the  
24    briefing of this case.

25          So first taking the money laundering statute -- and

1 the money laundering and the Travel Act are analyzed slightly  
2 differently, and *RJR* does provide some guidance.

3 Taking first the money laundering statute. The  
4 Second Circuit, which was the underlying case in *RJR*,  
5 concluded that the money laundering statute does apply to  
6 extraterritorial conduct. But that does not end the inquiry.

7 Under *RJR*, when a statute has been found to have  
8 extraterritorial effect, the question as to whether or not  
9 the statute can be applied extraterritorially in a specific  
10 circumstance depends on the limits set forth in the statute  
11 itself.

12 So in terms of money laundering conspiracy, we go  
13 to 18 USC 1956(f)(1), which is a section that speaks about  
14 jurisdiction over money laundering. And that provision says  
15 that, in the case of a non-U.S. defendant, a money laundering  
16 prosecution is permissible in the U.S. if the conduct  
17 occurred in part in the U.S.

18 And this would be another area in which our brief  
19 and the government's brief overlap. We both recognize that  
20 this "in part in the U.S." test is what should be applied to  
21 money laundering.

22 Here, the conduct that's alleged in connection with  
23 the money laundering conspiracy is that defendants paid  
24 bribes to Indian officials in India with money that came from  
25 foreign bank accounts but was transferred through

1 correspondent banks in the U.S. The government says this is  
2 enough, and our argument is, the government is incorrect.

3 Now, in the government's response, they first say,  
4 well, there will be evidence beyond just correspondent banks,  
5 and that's where we are wrong, because, if this case were to  
6 go to trial, they have some other evidence that they didn't  
7 put in the indictment and that they will be raising that.

8 But respectfully, there is a line of cases, your  
9 Honor. One of them is *U.S. v. Gotti*. It's impermissible to  
10 expand -- in a discussion of a motion to dismiss to add facts  
11 that were never pled in the indictment.

12 So I don't know if they can or can't -- what they  
13 can or can't prove at trial, but I think what's before your  
14 Honor are the allegations that the government contained in  
15 the indictment, and those allegations don't have anything  
16 other than this correspondent -- to connect the money  
17 laundering fraud to the U.S. other than this correspondent  
18 banking allegation.

19 But the government addresses that, and they cite  
20 this *Bank Julius* case. It was a civil *in rem* forfeiture case  
21 out of Washington, D.C. And They cite some language in *Bank*  
22 *Julius* about correspondent banks.

23 But importantly, *Bank Julius* does not stand for the  
24 principle that a transfer of electronic funds through a U.S.  
25 correspondent bank, which is what we are dealing -- when we

1 are dealing with U.S. dollars, we are dealing with transfer  
2 of -- electronic funds transfer through a U.S. correspondent  
3 bank, because if you are denominating a transaction in  
4 dollars, that necessarily has to happen.

5 THE COURT: Okay.

6 MS. GURLAND: So what the *Bank Julius* case actually  
7 specifically held was that the use of U.S. currency, meaning  
8 U.S. correspondent banks, alone is not sufficient under  
9 1956(f)(1) to satisfy the requirement for prosecution in the  
10 U.S. that the conduct occurred in part in the U.S.

11 And in *Bank Julius* the court specifically  
12 recognized the limits of the money laundering statute  
13 application of foreign conduct. And the *Bank Julius* court  
14 concluded, look, in a case like this, which was the *Bank*  
15 *Julius* case, they actually had U.S. accounts. They had U.S.  
16 accounts -- I don't know if it was coming from or going to,  
17 but U.S. bank accounts were being used. We don't have that  
18 here.

19 And the *Bank Julius* case actually made a specific  
20 distinction and said, you know, it's much more complicated  
21 and it's much more attenuated if all you have is  
22 correspondent banks. But that's not what we have here.

23 And in addition, the *Bank Julius* case reiterated  
24 that it was the intention of 1956(f) to make sure that  
25 jurisdiction in the United States was confined to significant

1 cases where the interests of the U.S. were involved.

2 Well, in this instance, your Honor, we would submit  
3 there is not significant interests of the United States being  
4 involved beyond what the *Bank Julius* court -- the case cited  
5 in the government's own brief said it wasn't enough. There  
6 is not a significant interest.

7 The money didn't come from a U.S. bank account. It  
8 didn't go to a U.S. bank account. And there are no  
9 significant U.S. interests implicated to allegations  
10 concerning the payment of bribes to Indian officials in India  
11 in connection with a project that was unfolding entirely in  
12 India.

13 So also, your Honor, it's our position that  
14 Count II fails on its own. Count II -- the money laundering  
15 conspiracy charged in Count II fails on its own but also  
16 fails as a way of supporting the Count I RICO conspiracy --  
17 the RICO conspiracy in Count I. So it fails as a pattern act  
18 and fails as an independent count.

19 The same, we would say, your Honor, as to the  
20 Travel Act pattern acts. Those are Counts III and IV in the  
21 indictment.

22 So it's not enough to just analyze one pattern act.  
23 You have to analyze now the second pattern act, which is the  
24 Travel Act.

25 As I alluded to earlier, the Travel Act is analyzed

1 slightly differently than is the money laundering, because  
2 the Second Circuit in *RJR* actually looked at the Travel Act  
3 and said, well, the Travel Act, by its terms, actually  
4 doesn't overcome the presumption that the statute applies  
5 extraterritorially. Again, it doesn't end the inquiry. It  
6 just redirects it.

7           So when we were dealing with the money laundering  
8 conspiracy, we had to look to the language of the statute.

9           Now, in the Travel Act, because we are dealing with  
10 a statute that doesn't, on its face, have extraterritorial  
11 application, the court directs you to try to figure out the  
12 focus of the statute. And the test under *RJR* for the focus  
13 of the statute is whether conduct relevant to the statute  
14 occurred in the U.S.

15           If conduct relevant to the focus of the statute  
16 occurred in a foreign country significantly, it's  
17 impermissible to apply the statute in the U.S., even if other  
18 conduct occurred in the U.S. So they are looking very much  
19 at the focus.

20           So if the focus is internationally, it doesn't  
21 matter if some incidental things occur in the U.S., because  
22 what they are really after is, what was the focus?

23           So we are talking about the Travel Act. The Travel  
24 Act in Counts III and IV, they both charge that a  
25 coconspirator traveled from Chicago to North Carolina to

1 promote the illegal activity of money laundering.

2 The whole Travel Act is important, your Honor,  
3 because, of course, it can't be a crime just to travel from  
4 one place to another. The important part of the Travel Act  
5 is that you travel from one place to another in order to  
6 accomplish some illegal objective. That's the essence of the  
7 Travel Act.

8 Here, the underlying money laundering allegations  
9 all surround India. It's an allegation that there was  
10 illegal conduct, bribes in India, making bribe payments to  
11 Indian officials in India, in connection with India.

12 So I would submit that, looking at the illegal  
13 conduct that's alleged, it's practically enough to understand  
14 that the focus is India. But there are some tests, and it's  
15 a relatively new area of the law.

16 There are two cases that provide some guidance  
17 about how to assess the focus of the statute. I didn't find  
18 any cases that analyzed how to assess the focus of the Travel  
19 Act statute, but I found two cases -- well, the government  
20 actually found one and I found the other -- that assess the  
21 wire fraud, that assess wire fraud in terms of how you  
22 decipher the focus of wire fraud.

23 Although it's a slightly different statute, I would  
24 submit that they could provide guidance, because we don't yet  
25 have a lot of guidance with this *RJR* case being so new.



1           So under the *Bank Julius* case that the government  
2   cited, one could find that the focus of -- one can assess the  
3   focus of the statute by seeing that the defendant either  
4   committed a substantial amount of conduct in the U.S. or that  
5   the conduct that occurred in the U.S. was integral to the  
6   fraud or that the wire transfers happened in the U.S. So we  
7   will leave it there, that it's not really relevant here. But  
8   we can look at whether or not there is a substantial amount  
9   of conduct and whether or not the conduct that there was, was  
10   integral.

11           The *Hawit* case, out of the Eastern District of  
12   New York, said that when you are analyzing focus, you should  
13   have a holistic assessment of the conduct, but it did mention  
14   that incidental or minimal use of U.S. wires, in that case,  
15   was not enough.

16           So first, in this instance, the allegations of  
17   Travel Act violations in the indictment that were made were  
18   not integral to the fraud. So what we are talking about is  
19   Counts III and IV of the indictment. At Page 22 and 23 of  
20   the indictment, they allege travel between one of the  
21   coconspirators between Chicago and North Carolina without  
22   more detail.

23           I believe that I have located -- I believe that the  
24   more detail can be found at Page 17 and 18 of the indictment,  
25   Paragraphs 4 and 7, where it's alleged that Defendant La

1 traveled from Chicago to North Carolina, and then, after that  
2 travel, had a conversation, in some cases with a supervisor  
3 and in some cases with a subordinate, some conversations that  
4 were allegedly in connection with the bribery scheme.

5 But importantly, your Honor, I think that it would  
6 be difficult to argue that there would be any requirement  
7 that Lal traveled from Chicago to North Carolina, or indeed  
8 from anywhere to anywhere, in order to have this kind of  
9 correspondence with a subordinate or with a superior. He  
10 could have had these conversations anywhere in the world.

11 So in that, the travel was not integral to the  
12 fraud that was charged in the indictment. It just simply  
13 had -- the travel was incidental, as the *Hawit* case said was  
14 not enough, and it had nothing to do with the fraud that was  
15 alleged.

16 By the same token, your Honor, I would say that  
17 under the first prong of the *Bank Julius* case, the conduct  
18 that was in the United States wasn't substantial. And I  
19 think it's important, your Honor, to note that, in all the  
20 motion practice before this Court, we are always talking  
21 about the allegations of Lal's travel and email and computer  
22 use that are at Pages 17 through 19 of the indictment.

23 And the reason that our focus is always there is  
24 because these actions of Lal and, in some circumstances, this  
25 other defendant, Gevorgyan, are really the only connection in

1 the indictment between anything that's happening in the  
2 Indian bribery scheme and the United States.

3 But importantly, the allegations that are actually  
4 the basis of the conduct in the indictment, looking at sort  
5 of Page 1 through 10, those allegations center on the claims  
6 that foreign nationals participated in a scheme to bribe  
7 Indian officials in India.

8 They talked about planning for this offense. They  
9 talked about commission of this offense. They talked about  
10 concealment of this offense. And all of those prongs of this  
11 substantive offense of alleged bribery conspiracy, all of  
12 those things occur outside of the United States.

13 Given that the only thing that occurs in the United  
14 States is some travel by two of the defendants, it appears  
15 very much incidental to anything, your Honor. It would be  
16 our position that the Travel Act counts, Counts III and IV of  
17 the indictment, do not apply extraterritorially, nor do those  
18 counts form a sufficient basis as a pattern act for Count I,  
19 the RICO conspiracy violation.

20 So I am going to move on to the second, which is  
21 much shorter. It's just that that was actually pretty  
22 complicated legal -- a lot of complicated legal arguments. I  
23 anticipate these will go slightly more quickly, your Honor.

24 The second of the two legal arguments that I'm  
25 addressing is that the Foreign Corrupt Practices Act charged

1 in Count V of the indictment can't be prosecuted in the  
2 United States, because Mr. Firtash and Mr. Knopp do not fall  
3 into any of the enumerated categories to which the FCPA is  
4 meant to apply and that that result should not be altered  
5 through charging them with conspiracy.

6 So again, there is some points that the government  
7 and we agree on. I think there can be no doubt that  
8 Mr. Firtash and Mr. Knopp don't meet any of the three parties  
9 that it states in the FCPA that it applies to. That's a  
10 domestic concern. They are definitely not that. And a  
11 U.S. citizen acting outside the U.S. They are not that. And  
12 a person who acts in the territory of the U.S. who, I guess,  
13 could presumptively be a foreign national, but who acts -- a  
14 person who acts in the territory of the U.S. in furtherance  
15 of a corrupt payment. And there is no allegations in the  
16 indictment that, with respect to Mr. Firtash or Mr. Knopp,  
17 that they took a single action in the United States in  
18 connection with a corrupt payment, not a single one.

19 So that's where I think the government would not  
20 disagree with any of this.

21 Where the government and the defense part ways is  
22 that the government would say, okay, even accepting that  
23 that's true, we have charged conspiracy. So under conspiracy  
24 and under general conspiracy principles, you can be  
25 responsible for what another coconspirator does even if you

1 are not acting in the same place where they are acting.

2 We don't disagree that, as a matter of general  
3 conspiracy law, that would be the case.

4 But what -- our contention is something different.  
5 It's that it's a special circumstance when you have a statute  
6 that actually takes the time and goes to the trouble of  
7 enumerating people who can violate that statute. And our  
8 contention is that, when they do that, that Congress meant to  
9 restrict people who should be charged to the people  
10 enumerated in a statute, and that you shouldn't avoid the  
11 result of what Congress drafted carefully -- you presume  
12 drafted into the statute -- by simply charging a conspiracy  
13 and then accessing people through conspiracy that you  
14 couldn't access directly under the statute.

15 So this principle -- and the government is right.  
16 It stems from sort of an unusual case, this *Gebardi*  
17 principle. But we would part ways with the government. We  
18 don't think that this principle is quite as narrow as they  
19 would have it.

20 The principle is that, if Congress chooses to  
21 exclude a class of people for liability under a statute, then  
22 the executive can't simply override that by charging them  
23 with conspiracy.

24 There is a case, *United States v. Hoskins*. It's a  
25 Connecticut case. But interestingly, the *Hoskins* case

1 applied that exact reasoning to a defendant who is exactly --  
2 who is situated exactly like these defendants.

3 The defendant in *Hoskins* was an individual who was  
4 a foreign national, and they didn't allege that Hoskins took  
5 any actions in the United States.

6 The *Hoskins* court -- it was actually a very -- it  
7 was a lengthy -- it was a very, in my view, anyway, a very  
8 well-reasoned opinion. It went through in enormous detail  
9 the legislative history of the FCPA statute, tried to figure  
10 out through the various iterations and amendments of the FCPA  
11 statute, what was Congress trying to do.

12 And one of the conclusions that the *Hoskins* court  
13 made, your Honor, in looking at the FCPA statute, is that  
14 Congress was very cautious when it drafted the parties to  
15 whom FCPA should apply and that, even if there were  
16 individuals who could theoretically have been charged with  
17 bribery, Congress made a specific decision not to allow  
18 certain people to be prosecuted under this act.

19 In the *Castle* case, the Fifth Circuit applied the  
20 precise same reasoning, but *Castle* barred foreign officials,  
21 which is slightly different, because here we are -- we argue  
22 that what should be barred are foreign nationals not acting  
23 in the U.S. But the *Castle* case had the same exact analysis,  
24 finding that if the FCPA statute was drafted to exclude  
25 certain parties, then you shouldn't avoid that result by

1 charging them with conspiracy.

2 The government has several arguments against this,  
3 which I will go through very briefly, none of which we think  
4 is compelling.

5 First is that they say that, because defendants  
6 Knopp and Firtash are not necessary parties to the FCPA, that  
7 the exclusionary principle articulated under *Gebardi* and as  
8 adopted in *Hoskins* and *Castle* shouldn't apply.

9 This approach is actually based on a Seventh  
10 Circuit case called *Pino-Perez*, but the government actually  
11 misapplies the reasoning of the case.

12 *Pino-Perez* didn't involve FCPA at all. It involved  
13 an analysis of the "kingpin" statute, which is 21 USC 848.  
14 The kingpin statute is a statute that increases the penalties  
15 for major drug dealer supervisors. The statute provides for  
16 increased penalties if the defendant has a series of, like,  
17 five drug transactions and has a supervisory role.

18 The issue in *Pino-Perez* for the Seventh Circuit to  
19 assess was whether or not, under the drug kingpin statute,  
20 that could apply to aiders and abettors as a matter of  
21 statutory construction.

22 In trying to figure out what the proper statutory  
23 construction was, the court in *Pino-Perez* found that if a  
24 crime is defined so that participation by another party is  
25 necessary to commit the crime, then that party can't be an

1 aider and abettor.

2 And what they were trying to do, your Honor, is to  
3 look at what -- they made an assumption that if a court knew  
4 that there was a necessary party and chose not to include  
5 that party in liability, then the court must have intended  
6 that that party not have liability.

7 What the court stated in *Pino-Perez* is -- the  
8 *Pino-Perez* exception is that if a statute specifies who can  
9 be guilty of a crime necessarily involving one or more  
10 others, then the legislature didn't mean to include the  
11 others in the crime.

12 But I think properly applied -- I think it's  
13 important it's outside the FCPA arena. But if you apply this  
14 to FCPA, you are talking about a crime necessarily involving  
15 one or more parties.

16 Well, FCPA necessarily involves one or more  
17 parties. And in a crime necessarily involving one or more  
18 parties, if you don't put the party that you want to charge  
19 in the list of parties that it should apply to, I think  
20 *Pino-Perez* -- I would assert that *Pino-Perez*'s Seventh  
21 Circuit case stands for the principle, then, they weren't  
22 meant to be included. They weren't -- if you haven't  
23 included them and they are necessarily part of it, then they  
24 weren't meant to be included.

25 That would mean that Knopp and Firtash, as foreign



1 nationals, who never acted inside the U.S., would be excluded  
2 from the people who should be prosecuted under FCPA.

3 This conclusion, while we are never on absolute  
4 solid ground when we are analogizing something like the drug  
5 kingpin statute to FCPA, but I think my interpretation of  
6 this is amply justified by principles in *RJR Nabisco* and  
7 *Morrison*, the Supreme Court cases about the presumption  
8 against extraterritoriality, because both of those Supreme  
9 Court cases hold that when a U.S. statute has some  
10 extraterritorial application, the presumption against  
11 extraterritoriality operates to limit those provisions to  
12 their precise terms.

13 I think what that means in this case is restricting  
14 prosecution of Mr. Firtash and Mr. Knopp to the precise terms  
15 of FCPA under which they are not parties that can be  
16 prosecuted, just as *Hoskins* and *Castle* had held should not be  
17 able to be prosecuted under the FCPA.

18 Another of the government's arguments is that  
19 somehow, if this were the result, that neither Knopp nor  
20 Firtash could be prosecuted under FCPA, that this would be  
21 some violation of the OECD convention, because United States  
22 was supposed to take seriously foreign corruption. But I  
23 think that *Hoskins* went through and I think pretty much  
24 dispensed with that argument.

25 And the bottom line that *Hoskins* found is that --

1 Article 4 of the OECD convention is the portion on  
2 jurisdiction, and that portion of the convention provides  
3 that signatory states are to take all measures necessary to  
4 establish jurisdiction when the offense, one, is committed in  
5 its own territory; or, two, by its own nationals while  
6 abroad.

7 Well, interestingly, your Honor, those two  
8 jurisdictional requirements set forth in the OECD convention  
9 parallel exactly what the FCPA says, that they would govern  
10 action in U.S. territory, and they would govern nationals  
11 committed while abroad.

12 What we are arguing for is exactly what the  
13 provisions in the OECD jurisdictional article specify. And I  
14 would submit that because the OECD convention would specify  
15 those categories and would not include foreign nationals that  
16 don't act in the United States, it's actually support for the  
17 defendants' position, that the FCPA should not have applied  
18 to them.

19 The government has -- and it's in our briefs.  
20 There was some suggestion that a conspiracy case, *Ocasio*,  
21 changes the analysis, that another kingpin statute changed  
22 the analysis. Those arguments are in our brief. I won't  
23 take up any more of the Court's time on FCPA.

24 I want to move to the final part of the argument,  
25 being that it's our position that this prosecution violates

1 defendants' due process rights.

2 I guess I should first briefly assess that it is  
3 our position that, yes, defendants do have due process  
4 rights, notwithstanding the fact that they are foreign  
5 nationals. And the government says that there is no Seventh  
6 Circuit case that specifically engages in some lengthy  
7 discussion, but I don't think that that's necessary, because  
8 there is a Seventh Circuit case, really, on all fours with  
9 what our discussions are here today, which is *United States*  
10 *v. Hijazi*, H-i-j-a-z-i. And that case it's remarkably  
11 similar to the facts of this case.

12 In *Hijazi*, like this case, it is about foreign  
13 nationals. Incidentally, in *Hijazi* the foreign national in  
14 question wasn't in the United States, hadn't come to the  
15 United States, hadn't been arraigned, and that individual  
16 filed a motion to dismiss for extraterritorial jurisdiction,  
17 lack of jurisdiction. And the district court just didn't act  
18 on it. Just kind of waited and waited to see, well, he is  
19 not here. Is he going to come here? What's going to happen?  
20 And deferred ruling.

21 Also in *Hijazi*, specifically the defendant alleged  
22 that there was a due process violation. There was a  
23 violation of his due process rights.

24 And the Seventh Circuit had an occasion to look at  
25 this in some detail, because what they eventually did is,

1 they issued a writ of *mandamus*, directing the district court  
2 to rule on the defendant's jurisdictional motion, directing  
3 them to, and in that, directing them to rule on the portion  
4 of the argument which was the Fifth Amendment due process  
5 rights.

6 So while *Hijazi* didn't go into a lengthy discussion  
7 as to whether or not a foreigner could have due process  
8 rights, it certainly proceeded on the assumption that the  
9 defendant in that case did have due process rights.

10 And then, cited in our brief, your Honor, there is  
11 a number of other cases. Although they don't always engage  
12 in a lengthy discussion, although some do have some  
13 discussion, there is uniformly in the Northern District and  
14 in the Seventh Circuit the presumption that, if a foreign  
15 defendant raises Fifth Amendment due process rights in the  
16 court, the court should take up the discussion of those  
17 rights and that they have those rights.

18 THE COURT: What happened with Mr. Hijazi on  
19 remand? What did the district court do?

20 MS. GURLAND: On --

21 THE COURT: On remand. After the Seventh  
22 Circuit -- well, I shouldn't say "remand." After the  
23 *mandamus* issued, what happened to Mr. Hijazi?

24 MS. GURLAND: I think that they -- I don't know  
25 what they finally ruled as to whether or not that his due

1 process rights were violated in that case.

2 THE COURT: That's what I was wondering. All  
3 right.

4 MS. GURLAND: Then, from there, your Honor, once  
5 you accept that the *Hijazi* case and others establishes that  
6 these foreign nationals have due process rights, the issue  
7 becomes how, then, to analyze those due process rights.

8 This is another area in which the defense and the  
9 government are in agreement. We both believe that, as the  
10 lower court in *Hijazi* alluded to, and the Seventh Circuit  
11 came back and said, yes, we believe that the proper analysis  
12 in the Seventh Circuit is an international law analysis,  
13 which means that you would proceed under Sections 402 and 403  
14 of the Restatement (Third) of Foreign Relations. So under --  
15 that's what the test would be under the Seventh Circuit for  
16 due process rights. So it's in four parts.

17 First, there is the requirement that the -- it  
18 would be a due process violation unless conduct occurred  
19 wholly or in substantial part in the United States.

20 So obviously we know that we are not talking here  
21 about conduct that occurred wholly within the United States,  
22 because there was plenty of conduct that took place not in  
23 the United States. But in assessing whether or not it's  
24 substantial, there is just a whole list of things that had  
25 nothing to do with the United States. There is zero

1 allegation that any of the defendants met with each other in  
2 the United States to talk about a bribery scheme. There is  
3 no allegation that they ever talked to or emailed with, like,  
4 Indian officials who were supposed to be bribed in the United  
5 States. There is no allegation that anybody paid any Indian  
6 officials in the United States.

7           There is no allegation that U.S. bank accounts were  
8 used to transfer money from these accounts. There is no  
9 allegation that U.S. banks were used to receive money in  
10 these accounts.

11           There is no allegation, as was in *Sidorenko* -- in  
12 the *Sidorenko* case -- and it wasn't even found to be  
13 enough -- that somehow the United States Government funded a  
14 portion of some of the operations going on. There was no  
15 question of U.S. Government funding anything in this case.  
16 It was -- anything in the U.S. was a private company going to  
17 maybe buy something.

18           There was also no allegation that any of the  
19 discussions that are alleged in the indictment about  
20 concealing their activity or hiding their activity,  
21 disguising their activity, that any of those things happened  
22 in the United States.

23           So what the government says is -- again, at Page 17  
24 to 19, some travel by a couple of people within the U.S. and  
25 phone and email use, U.S. correspondent banks. And, your

1 Honor, it's our position, as I had to go through with you  
2 earlier in the analysis under RICO, it's not substantial  
3 conduct in the United States of America.

4 And particularly relative to all of the things that  
5 are charged in the indictment about this massive, they say,  
6 bribery scheme in India, with Indian officials, especially in  
7 comparison to all of the things that they allege that are  
8 happening in India, it's our position that it's incidental,  
9 it's minuscule, and it's insignificant.

10 Secondly, under the Restatement, it would be a  
11 due process violation if the allegations in the indictment do  
12 not establish the intent to have a substantial effect in the  
13 U.S.

14 This requirement sort of grew up around the  
15 mine-run of cases in which you have these kind of  
16 discussions, which are drug cases, in which somebody is  
17 saying, okay, well, you did all of this preparation outside  
18 the U.S. You conspired outside of the United States. You  
19 didn't do anything within the United States. But what your  
20 intention was, was to introduce huge amounts of drugs into  
21 the United States that people could illegally buy and suffer  
22 from.

23 So in cases like that, as is the case in terrorism  
24 cases, for example, you could have foreign defendants  
25 planning all kinds of nefarious things outside of the United

1 States, nothing to do with United States. But ultimately, if  
2 there was going to be -- I mean, I guess on this day, it's a  
3 very appropriate day to discuss it, on the anniversary of the  
4 tragedy that befell this nation on September 11th. But in  
5 terrorism cases -- and there is a huge expanse in the  
6 jurisdiction that U.S. courts were willing to allow in such  
7 circumstances. And that connection would be some people  
8 acting from outside the United States to hurt or damage  
9 United States interests or United States citizens in the  
10 United States.

11 In cases like that, when there is some intent to  
12 cause harm or damage in the United States, quite reasonably  
13 United States courts have routinely found that, no, you can't  
14 direct and intend to cause damage to United States citizens  
15 or interests in the United States and avoid prosecution here  
16 under a due process analysis.

17 Well, your Honor, this case is nothing like those  
18 cases. There is nothing that would show that these  
19 individuals are engaged in transnational criminal activity or  
20 anything like this. There is some allegation -- there is  
21 U.S. correspondent banks.

22 But again, even if Company A had bought titanium  
23 sponge, I mean, this is not going to have some enormous  
24 effect on U.S. commerce, particularly because they can't even  
25 allege that this titanium sponge that they never bought was



1 even going to come into the United States. And it's just --  
2 it's absolutely different than the cases that would expand  
3 jurisdiction to protect U.S. citizens and a violation of due  
4 process.

5 The next point under the Restatement -- this is  
6 402(3) -- is that you can -- it's not a due process violation  
7 if the activity is designed -- there is a significant U.S.  
8 interest.

9 Again, it's the same sort of thing. Security  
10 threats, terrorism cases, drug cases targeting our nation.  
11 In that, your Honor, when the government talks about this  
12 case and it talks about transnational organized crime,  
13 criminal operations, I think it can't be emphasized enough  
14 that the reality is just different.

15 There is no allegation that there was anything  
16 wrong with this mining and refining operation in India.  
17 There was no problem that was going to hurt India or hurt the  
18 United States or hurt any United States interests in titanium  
19 sponge or anything else. There is just nothing like that.

20 Just to appreciate just how different this case is,  
21 the facts of the *RJR* case -- in the *RJR* case, it was an  
22 allegation that there was this global drug smuggling  
23 conspiracy involving organized crime and involving getting  
24 money paid in euros through a black market. In fact, that  
25 was what the *RJR* case was about. But in that case, U.S.

1 companies were actually involved in it, and U.S. wires were  
2 actually integral, like critical to these operations.

3 In this case, this case is just, respectfully,  
4 absolutely nothing like the cases -- the mine-run of cases  
5 that you would even see in a due process analysis, because  
6 it's so far outside the confines of anything that anybody  
7 would reasonably try to prosecute in the United States.

8 Which leads me to my last point. The prosecution  
9 is not reasonable. That's under Restatement 403(2).

10 It's a fact-specific inquiry, of course, that they  
11 give just a few examples of what might be some factors to  
12 consider in assessing reasonableness.

13 One is, again, the extent to which the activity has  
14 a substantial, direct foreseeable effect on the U.S. We have  
15 been through that several times. I won't go through it  
16 again.

17 Two, the character of the activity to be regulated.  
18 Here, the character of the activity -- I think they are  
19 looking for somebody to say, you know, guns or drugs or  
20 terrorism. No.

21 Here, it's the character of the activity is the  
22 allegation of bribing foreign officials in a foreign country  
23 in connection with foreign operations. That's the character  
24 of the activity to be regulated. Your Honor, we respectfully  
25 submit, it should not be regulated.

1           Another point is the justified expectation that  
2           somebody might have that they would be protected and they  
3           would be hurt. I would hearken back to what Mr. Webb said at  
4           the beginning about his client. He doesn't speak English.  
5           He has never been to the U.S. Has no business here.

6           Mr. Knopp does speak English but has never been  
7           here. No business interest here. They have done nothing  
8           that's alleged in the indictment that was here.

9           And I think they would have a reasonable  
10          expectation that they wouldn't be hailed into court in the  
11          Northern District of Illinois, or even in the United States,  
12          based on operations and allegations occurring entirely within  
13          India.

14          The last two points, the extent to which the  
15          prosecution would be consistent with traditional --  
16          traditions of the international system. Well, your Honor,  
17          there is no more -- there is no stronger tradition of the  
18          international system than the presumption against  
19          extraterritoriality; whereas, other cases have said that the  
20          United States, it can enforce its laws, but it's not the  
21          policeman of the world. And it's something that the U.S.  
22          comes under fire for from time to time. That's why we have  
23          this presumption, and it should be enforced.

24          And finally, the extent to which another state may  
25          have an interest in regulating the activity. Well, your

1 Honor, if any state or nation has an interest in regulating  
2 the activity here, I expect it would be India, because the  
3 allegations are that Indian public officials took bribes, in  
4 India, in connection with Indian mining and refining  
5 operations.

6 I don't know the precise status of what people are  
7 doing in India, but certainly, if we are assessing what state  
8 could have some interest in prosecuting this case, I would  
9 assume it would be India, not the United States, where  
10 absolutely, with very little, other than incidental, conduct  
11 even happened, and there was practically zero effect on  
12 anything involving the U.S.

13 THE COURT: All right. Thank you, Ms. Gurland.

14 I want to hear from the government. Let's take a  
15 five-minute recess.

16 (A brief recess was taken at 3:30 p.m. until 3:43 p.m.)

17 THE COURT: You may be seated.

18 All right. Mr. Bhachu, you have a response for us?

19 MR. BHACHU: Yes, Judge.

20 And if I might, Judge, I have my colleague from the  
21 fraud section in Washington. Jonathan Robell has come out --  
22 flown out for this proceeding. I would ask, if I might  
23 respectfully, to have Mr. Robell, after I am done giving you  
24 some thoughts, address the FCPA challenge, if that's  
25 possible.

1 THE COURT: That's fine.

2 MR. BHACHU: Thank you, Judge.

3 Judge, we have been here for probably about a good  
4 hour and a half now. I certainly would invite you, if you  
5 have any questions of me, to -- so that I don't just drone on  
6 myself, I welcome any questions you might have as I am  
7 talking. If I can address anything that would be helpful to  
8 you, I appreciate you letting me know.

9 THE COURT: Okay.

10 MR. BHACHU: Judge, with regard to the arguments  
11 that were raised, I think we can start, first off, with the  
12 issue of ripeness that was discussed by Mr. Webb.

13 First off, there is a suggestion that the  
14 proceedings in Austria are over, but that's tagged on to --  
15 or the statement tagged on to that is that the Austrian  
16 Supreme Court is still engaged with the case, because there  
17 has been a discretionary appeal that's been filed with the  
18 Austrian Supreme Court.

19 THE COURT: Have they taken the appeal? Do you  
20 know?

21 MR. BHACHU: I don't know if they have taken the  
22 appeal or not. So far as I know, no decision has been made  
23 as of today. Sometimes it takes a little while for us to  
24 find out what's going on in Austria, as you might imagine.  
25 But I know an appeal has been filed. I know there was a 70-

1 to 80-page document that was filed on behalf of Mr. Firtash.

2 So to say that everything is over in Austria, I  
3 don't think is really correct. It may be that the Austrian  
4 Supreme Court can decide that they are not going to hear the  
5 case, but we simply just don't know right now what is going  
6 to happen.

7 THE COURT: Was Mr. Webb right that there is no  
8 stay?

9 MR. BHACHU: Well, from what I understand, Judge,  
10 the Ministry of Justice is not going to act to extradite  
11 Mr. Firtash until proceedings before the Austrian Supreme  
12 Court have been concluded.

13 I have gotten no indication. And, frankly, I think  
14 I would have gotten indication to the contrary, because  
15 Mr. Firtash lost in that appeal, I believe, back in  
16 February -- at the end of February. So if it were the  
17 case -- I am obviously anxious to get Mr. Firtash back  
18 here -- we would have taken the appropriate steps to bring  
19 him back here and we wouldn't be having this inquiry.

20 If it's, in fact, true, as Mr. Webb says, that the  
21 proceedings are within weeks or months of concluding and that  
22 they will conclude shortly, then, I guess, as a practical  
23 approach or a question kind of raises its head, which is, why  
24 not wait, then? Why not wait for Mr. Firtash to actually be  
25 here? If it's just going to be, as Mr. Webb suggests, a

1 matter of a couple weeks or several weeks, what's the harm in  
2 waiting?

3           There is a benefit in waiting, and that is that, if  
4 a decision is rendered by this Court that is adverse to  
5 Mr. Firtash, we can be confident that Mr. Firtash will  
6 actually be bound by the decision, that he is not going to  
7 decide, as he is right now in Austria, if he hears that the  
8 court renders an adverse decision, he is going to hop on a  
9 private plane -- that's the way he gets around -- and head  
10 over to Moscow or some other country where we can't extradite  
11 him.

12           By the same token, I think that, with regard to  
13 Mr. Knopp, we heard today that he is an old man and he wants  
14 to travel. But I look back to the filing that he made. In  
15 his initial motion to dismiss, on Page 1 of that motion, he  
16 indicates, effectively, that he was quite content to not do  
17 anything.

18           And it says -- and I am reading from his filing --  
19 "Knopp has maintained his silence in the face of Firtash's  
20 battle against extradition from Austria."

21           And then it says, "However, with the decision  
22 having been made on February 21st, 2017 --" alluding to the  
23 decision to extradite Mr. Firtash "-- he can no longer  
24 refrain from addressing this injustice."

25           So the only reason that he makes -- or gives, at

1 least initially, for why this motion has been filed is  
2 because Mr. Firtash has been ordered extradited.

3 What I would suggest to your Honor is, at a  
4 minimum, that we wait for Mr. Firtash to come back here, and  
5 then we can consider whether or not it might be appropriate  
6 to consider Mr. Knopp's motion to dismiss.

7 One of the concerns I have, too, is, having watched  
8 the extradition proceedings unfold for about three years in  
9 Austria, I have been watching what Mr. Firtash and his media  
10 representatives have been saying over there, what they have  
11 been saying both to the media and to the court. There have  
12 been a lot of statements there that we are not in a position  
13 to correct, because we are not in Austria, that are full of  
14 statements that are just simply not accurate.

15 And I am concerned that if we go forward and we  
16 have this type of decision now, how that might be used or  
17 misinterpreted in Austria.

18 There was a suggestion, I think even in one of  
19 these filings, that the United States was responsible for  
20 Spain charging Mr. Firtash in Spain. That is untrue, but  
21 nonetheless some of the attorneys from Austria do not feel  
22 constrained to suggest that that is, in fact, the case.

23 So there is a concern that what happens here and  
24 how it is portrayed in Austria is something beyond our  
25 control. And that's why we have a great concern about moving



1 forward until we actually have Mr. Firtash here in our  
2 jurisdiction.

3 I think, given the fact that the defense claims  
4 that his appearance here is imminent, we will pay for his  
5 cost of travel here. So it may be inconvenient, but he has  
6 been effectively detained in Austria for three years. If it  
7 is in fact so, that he is entitled to have his claim heard,  
8 there is no reason why he can't wait a couple more days or  
9 weeks after having been detained for three years in Austria  
10 during the course of the extradition proceedings.

11 With regard to the issue of venue, our brief -- it  
12 was pretty lengthy. I apologize for that, but there was a  
13 lot to cover. But our brief does cover this issue of venue  
14 quite extensively, and there were some things that were  
15 talked about by Mr. Webb and some things that were not talked  
16 about by Mr. Webb with regard to venue.

17 We would point, first of all, the Court to the case  
18 from the Fourth Circuit, which has been adopted, recited with  
19 approval by the Seventh Circuit. That's the *Engle* case,  
20 which is referenced on Page 27 and 28 of our brief.

21 And effectively that *Engle* case says that where the  
22 government alleges in a criminal indictment that the offense  
23 occurs in a particular district and elsewhere, that that is  
24 sufficient to deny a pretrial motion for venue.

25 There is some suggestion that, no, we must actually

1 set forth a litany of facts about all overt acts that may  
2 have taken place in this district. That's simply not the  
3 case. We do not agree with the defense about that. That is  
4 not the law. If that were the law, can you imagine how many  
5 narcotics indictments that come through this courthouse every  
6 month that just allege in one paragraph that the crime  
7 occurred in the Northern District of Illinois and elsewhere,  
8 what type of deficiency we would have there?

9 THE COURT: Except usually it's really not  
10 contested.

11 In this case -- because usually, when you are  
12 dealing with drug deals, they happen kind of all over and  
13 certainly happen here.

14 The argument here is that all the acts occurred --  
15 at least, that's what I understand the argument to be -- all  
16 the acts occurred in India or mostly in India. They involved  
17 bribes paid to Indian officials about a product that was  
18 being generated there for transfer outside of India to all  
19 over the world, I guess, but also to here.

20 I guess I am troubled by the fact that there is no  
21 allegations specifically about the Northern District of  
22 Illinois.

23 What does show up in the indictment -- I mean, the  
24 three that Mr. Webb spent some time on, we looked at those.

25 There is also the matter of -- there are

1     allegations, for example, in -- I guess these are all money  
2     laundering allegations -- about travel from the Northern  
3     District -- in the Northern District of Illinois, from  
4     Chicago to Greensboro. I assume those are other defendants  
5     besides the ones that are before us.

6             MR. BHACHU: Yes, Judge. Let me try to address  
7     that, then. One baseline thing, I think, to talk about, as  
8     it relates to the offenses charged.

9             So the 1956 offense, which is one of the  
10    racketeering predicates in this case, is promoting specified  
11    unlawful activity, engaging in financial transactions to  
12    promote specified unlawful activity.

13            And you just mentioned earlier -- and I think it's  
14    important to kind of talk about this -- that, look, this  
15    involved a bribery scheme involving Indian public officials.

16            Congress has said that a specified unlawful  
17    activity under 1956 is the bribery -- or bribery of a foreign  
18    official in violation of foreign law.

19            So if you engage in activity that relates to the  
20    bribery of a foreign official; i.e., financial transactions  
21    to promote that activity, that is a violation of U.S. law.

22            And the reason why that's in there is because  
23    Congress added that so that we were in compliance with our  
24    treaty obligations. We have these treaties to counteract  
25    bribery throughout the world that are treaties that had been

1 signed by dozens, if not over 100, countries with regard to  
2 both the Palermo Convention, which we talked about, that  
3 governs cooperative efforts with regard to transnational  
4 organized crime, as well as the bribery conventions that we  
5 also mentioned in our filings.

6 So while it is true that the bribery was taking  
7 place or was -- concerned Indian public officials, what is  
8 also true is that the transactions that are alleged to have  
9 taken place in the indictment concern payments that were made  
10 from or to the United States in furtherance of that bribery  
11 activity. And that is something perfectly within the scope  
12 of that statute.

13 We alleged 50 financial transactions in the  
14 indictment under 1956 in Count I that specify that there were  
15 transactions from or to the United States in aid of the  
16 illegal activity that was taking place. These were financial  
17 transactions that used the U.S. financial system.

18 If you look at the *Julius Baer* case, the case that  
19 was cited by counsel, respectfully, I think they have  
20 misinterpreted the case.

21 The court in that case made clear that Congress'  
22 intention in applying the statute in these types of  
23 circumstances was to ensure that the U.S. financial system  
24 did not become a clearinghouse for criminals. And for that  
25 reason, Congress wanted to get within the scope of U.S.

1 criminal law, allow prosecutors to challenge and attack any  
2 efforts that were made to promote this type of bribery  
3 activity through the use of the U.S. financial system. And  
4 that's precisely what we are doing here.

5 So part of the allegations relate to the use of the  
6 U.S. financial system. *Julius Baer as well as the Prevezon*  
7 *Holdings* case both specify and hold that it's appropriate to  
8 base jurisdiction, if you will, on the use of banks in the  
9 United States for that purpose.

10 But that's not the only thing that ties the case to  
11 this country.

12 The purpose in obtaining these licenses through  
13 bribery -- these licenses or approvals through bribery in  
14 India was so that product could be sold and money could be  
15 made to enrich the racketeering conspiracy.

16 A substantial portion of the product to be  
17 generated from that mining operation was to be sold to  
18 Company A here in the United States. In fact, we allege in  
19 the indictment that there was a memorandum, which the parties  
20 entered into, which specified that they would work toward the  
21 provision of between 5 and 12 million pounds of titanium  
22 annually to Company A. That's not some insignificant amount.  
23 That is not some sort of incidental sort of effect, if you  
24 will.

25 That goes to, I think, an issue that I will speak

1 to a little bit later in my remarks, but one about the effect  
2 on commerce.

3 Certainly there is an effect on commerce where you  
4 have a conspiracy, part of which is designed to introduce  
5 12 million pounds annually of tainted goods into the United  
6 States. How can that not represent an effect on commerce?

7 Your Honor well knows from the instructions that  
8 are given when we talk about effect on commerce that the  
9 instruction for effect on commerce talks about an effect on  
10 commerce to any degree. And sometimes, in some cases, that  
11 effect on commerce can be rather small. But we are not  
12 talking about a potential small effect on commerce. We are  
13 talking about a substantial one.

14 And not only are we talking about the financial  
15 system being utilized through the United States, not only are  
16 we talking about the introduction of titanium into the United  
17 States. We are also talking about the other acts that were  
18 taken throughout the United States in aid of the conspiracy.

19 The indictment itself, which does not actually have  
20 to allege any overt acts, I would respectfully submit, with  
21 regard to a racketeering conspiracy case, because there is no  
22 overt act requirement, does specify certain things did occur  
23 here in the United States; for example, meetings that took  
24 place with representatives of Company A by one of the  
25 codefendants, who went to discuss the progress of the project

1 as well as the terms on which titanium product would be sold  
2 to Company A.

3 We also have, with regard to this district in  
4 particular, the trips that are taken by Mr. Lal, the  
5 codefendant, from this district to his home in Greensboro.

6 Now, one of the things that was, I think, missed is  
7 that Section 3237, when we talk about venue -- and I believe  
8 this appears on perhaps Paragraph 33 of our brief. I think  
9 there might be a reference to the statute. Sorry. I beg  
10 your pardon. Not 33.

11 3237, which I should probably reference, says  
12 effectively that an offense involving transportation is a  
13 continuing offense and may be prosecuted in any district from  
14 or through which a person moves.

15 And the correct citation is on Page 27, where we  
16 actually reference that portion of the venue statute. Let me  
17 cite it for you in full.

18 "Any offense involving the use of the mails,  
19 transportation in interstate or foreign commerce, or the  
20 importation of an object or person into the United States is  
21 a continuing offense and, except as otherwise expressly  
22 provided by enactment of Congress, may be inquired of and  
23 prosecuted in any district from, through, or into which such  
24 commerce, mail matter, or imported object or person moves."

25 So we have allegations both in Count I as well as

1 in Counts III and IV that Mr. Lal traveled from this district  
2 to Greensboro, North Carolina, and thereafter takes steps to  
3 advance the conspiracy.

4 My friends on the other side say that, well, these  
5 acts or this travel was incidental. That's their view of the  
6 issue. That's something that has to be resolved at trial.  
7 That will be up to us to convince a jury that it was an  
8 integral part or an important part of the actual  
9 conspiratorial activity.

10 Parenthetically, I would note that what happens  
11 here is, Mr. Lal goes on two trips to India for the purposes  
12 of furthering the bribery activity. He does what he does in  
13 India and he comes back. And then, when he returns, he  
14 travels from Chicago to North Carolina and then takes further  
15 steps in aid of that bribery activity.

16 So it's not incidental. It was an integral part of  
17 the conspiracy as a whole. And obviously, we need to have  
18 the full sense of the evidence at trial in order for a jury  
19 to appreciate that, in fact, it was not incidental at all.

20 So Count I, Count III, Count IV all actually  
21 allege, as is appropriate under Section 3237, travel from  
22 this district. And they all indicate that those offenses  
23 include travel from this district. That should end the venue  
24 inquiry right there as to those counts.

25 With respect to Count II, it's obviously based on



1 the same sorts of operative facts with regard to Count I as  
2 well. And Count V incorporates certain paragraphs from  
3 Count I that specify the travel as well.

4 There was also some sort of allegation that, well,  
5 look, there is no indication some cell phone or anything like  
6 that was used in the Northern District of Illinois in aid of  
7 the conspiracy.

8 I would invite the Court to actually take a look at  
9 the indictment in paragraph -- the paragraph concerned, which  
10 appears on Page 19 of the indictment, and I think that that  
11 argument is not well-founded either.

12 On Paragraph 19 it says, "It was further part of  
13 the conspiracy that one or more of the conspirators used and  
14 caused the use of cellular telephones, including, but not  
15 limited to, a cellular telephone located in Chicago,  
16 Illinois, and operated on the interstate network of AT&T with  
17 the intent to promote, manage, establish, carry on, and  
18 facilitate the promotion, management, establishment, and  
19 carrying on of the money laundering."

20 And then it says, "and thereafter did perform,  
21 cause to be performed, and did aid and abet the performance  
22 of acts to" -- and then it continues on to say, promote,  
23 effectively, the unlawful activity, including, but not  
24 limited to, communicating the status of the conspirators'  
25 activities and discussing and directing future activity.

1           So a fair reading of that paragraph in the  
2 indictment is that there was actually use of a cell phone in  
3 Chicago -- and I think that's what the evidence is going to  
4 show -- that was used to promote the carrying on of the  
5 unlawful activity in this case.

6           With regard to the other defense arguments that  
7 were raised with respect to venue, there was some suggestion  
8 of, well, we can't wait to raise it. We have to actually  
9 raise it before trial, under Rule 12.

10          That may be fair and that may be true, but that  
11 doesn't mean, then, that what the defense gets to do is give  
12 their opinion of what the facts will show at trial. That's  
13 what the trial is for.

14          And while we have pled that there were acts taken  
15 in this district, the evidence at trial will be what will  
16 decide whether or not we have sufficiently alleged venue.

17          As I said -- as we wrote in our filing, we are not  
18 restricted to the evidence that appears in the indictment to  
19 prove venue in this district.

20          One example I gave that doesn't appear in the  
21 indictment is that Andras Knopp actually traveled to this  
22 district and met with Company A in this district for the  
23 purpose of furthering the project. That is something that  
24 will also come into evidence.

25          What will also come into evidence are those acts

1 that were taken by Company A at the behest of the  
2 conspirators to assist and aid the project. Some of those  
3 acts -- and we are not saying that Company A did anything  
4 wrong, but what we are saying is that those acts assisted the  
5 conspiracy. There is going to be evidence of, for example,  
6 folks traveling from the United States, Company A personnel  
7 traveling from the United States on multiple occasions to  
8 meet with some of the conspirators in this case to discuss  
9 the advancement of the project.

10 These are all things, obviously, that aren't  
11 necessarily in the indictment, because they are disputed.  
12 And because they are disputed, I don't think it's proper at  
13 this point for the Court to decide those matters.

14 We have made the allegation that the crime took  
15 place here and elsewhere in the indictment. We have given a  
16 couple of examples in the indictment about activities that  
17 took place in Chicago.

18 And it's also not correct to say that overt acts in  
19 Chicago have to be illegal on their face. That's not true  
20 either.

21 If we look at Page 33 of our brief, there is  
22 reference to cases that say that an overt act is an act  
23 that's legal or illegal that advances or furthers the  
24 conspiracy.

25 So it isn't correct to say that an overt act must

1 be illegal on its face in order for it to give rise to venue  
2 in this district.

3 So I think for those reasons with regard to venue,  
4 unless the Court has other questions with regard to venue,  
5 which I am happy to address right now, venue is proper here.  
6 And the defendant will have ample opportunity to raise the  
7 issue of venue in motions after trial, once the evidence is  
8 in.

9 We have made the allegations that there was  
10 activity in this district, and that should be sufficient to  
11 end that inquiry.

12 With regard to --

13 THE COURT: No specific question about venue, but  
14 what exactly is titanium sponge?

15 MR. BHACHU: Well, titanium sponge and products  
16 like it can be used for aerospace applications, for example,  
17 to be used to build airplanes.

18 THE COURT: Is it actually spongy?

19 MR. BHACHU: That might be beyond my area of  
20 expertise, Judge.

21 THE COURT: Somebody in this room knows. At the  
22 conclusion of the hearing, I will invite that person to speak  
23 up.

24 MR. BHACHU: That's probably right, Judge.

25 With regard to the issue regarding extraterritorial

1 application of the racketeering statute, of course, we  
2 discuss at length in our filing the purpose of the  
3 racketeering statute and the history of the racketeering  
4 statute. I won't belabor that discussion here today. But  
5 suffice it to say that the racketeering statute was intended  
6 to be, effectively, the premier tool in the kit, if you will,  
7 to go after organized crime, criminal enterprises that  
8 Congress felt posed a major threat to the general welfare of  
9 the United States.

10 And it's worth noting that when Congress also  
11 ratified -- the Senate ratified both the Palermo -- well, the  
12 Palermo Convention and when the president and the executive  
13 branch urged the ratification of the Palermo Convention,  
14 which obligates the United States to join in this  
15 international fight against organized crime, both the  
16 president and the Senate believed that the existing body of  
17 federal laws -- federal criminal laws -- would be sufficient  
18 to tackle the problem of transnational organized crime.

19 This is a case that, by definition, is one which  
20 concerns transnational organized crime.

21 As I discussed earlier, yes, we do have criminal  
22 activity taking place in India, but Congress has actually  
23 made this law that actually outlaws the use of the U.S.  
24 financial system in aid of bribery activity abroad.

25 We have people taking advantage of the U.S.

1 financial system, taking acts here in the United States in  
2 aid of that illegal activity, traveling in the United States  
3 in aid of that illegal activity.

4 This is the kind of quintessential example of what  
5 folks were concerned about, that if you have a case of  
6 transnational organized crime, that it be something that you  
7 can actually tackle and challenge in a unified way by -- by  
8 the global community in a unified way.

9 So with regard to the racketeering statute and its  
10 application here, obviously there is this presumption against  
11 extraterritoriality, which has been discussed. But what is  
12 really important is that the holding of *RJR Nabisco* was that  
13 foreign enterprises are actually covered by the racketeering  
14 statute.

15 So while there is this discussion of, hey, this  
16 happened abroad, you know, Indian and public officials were  
17 bribed, et cetera, the Supreme Court made it clear that  
18 foreign enterprises, criminal rings, associations were  
19 covered by the racketeering statute, so long as the pattern  
20 of racketeering involved racketeering acts that either  
21 applied domestically by their terms or applied  
22 extraterritorially by their terms. And that's what we have  
23 in this case.

24 There was some discussion about the Travel Act  
25 allegations in Count I, but it was incomplete.

1           If you look at the Travel Act allegations in  
2 Count I, which appear on Pages 16 and 17, just if you look at  
3 them -- I guess one of the things is -- again, if we look  
4 back at *Glecier*, the Seventh Circuit's case, we are not  
5 required to allege a completed act of racketeering activity  
6 in order to allege a racketeering conspiracy.

7           So how can it be that by not specifying something  
8 as it relates to a completed act, that we have failed to  
9 properly allege a racketeering conspiracy, so long as we do  
10 allege that it took place in part in this district, as we  
11 did.

12           But if we look at the indictment, we go above and  
13 beyond what's required under the statute, Judge. And it says  
14 there that we have -- for example, on Page 17, Codefendant  
15 Suren Gevorgyan travels from New York to Seattle and  
16 thereafter meets with representatives of Company A and  
17 discusses the progress of the project.

18           There are multiple examples that are given over the  
19 next two pages that discuss travel taken solely within the  
20 United States and acts done solely within the United States  
21 to advance the conspiracy. How can that be an  
22 extraterritorial application of the statute where we are  
23 alleging travel from Point A in the United States to Point B  
24 in the United States and then, upon arrival in Point B in the  
25 United States, some act taken in furtherance of the

1 conspiracy?

2 That is actually the opposite. That is, by  
3 definition, an example of a domestic application of the  
4 statute, not an extraterritorial one.

5 So when there is this discussion about the Travel  
6 Act, we have at least probably about six or seven examples of  
7 travel in the indictment itself that make it clear that there  
8 was travel in the United States and action taken in the  
9 United States to advance the goals of the conspirators.  
10 Those are all domestic applications. Those are all  
11 appropriate, and there is no indication to think that we are  
12 not going to be able to prove that at trial.

13 And the same goes for the money laundering statute.  
14 We allege 50, approximately, financial transactions occurring  
15 in the United States -- in part in the United States, which  
16 is all that we are required to allege under the money  
17 laundering statute for the reasons that I gave before, if you  
18 look at the *Julius Baer* case and the *Prevezon Holdings* case.

19 In those cases, it's simply also not the case  
20 that -- I think that counsel may not fully appreciate how the  
21 financial transactions may have actually been conducted with  
22 regard to those financial transactions that are specified in  
23 the indictment.

24 It may not be the case that they were all conducted  
25 in the same manner. There are various different ways that



1 financial transactions are conducted through U.S. banks, and  
2 they are not all simply EFTs. There are certain things  
3 called SWIFT payments, which include crediting accounts of  
4 different entities or banks at U.S. financial institutions  
5 and then sending directions abroad concerning those credits.

6 So there is nothing in the indictment, which is all  
7 the Court has right now, for the Court to conclude that, oh,  
8 well, these transactions don't somehow involve the United  
9 States in part. The allegation is that they do, and there  
10 isn't any reason to think, based on the cases that we cite,  
11 that is not a proper invocation of the Court's jurisdiction  
12 as it relates to this issue of extraterritoriality.

13 There is also the claim that we haven't shown  
14 effect on commerce. I talked about that a little bit  
15 earlier. I think the only point to make there is that's,  
16 again, a trial issue. Whether or not we show effect on  
17 commerce is something that we are going to be bound to prove  
18 at trial. I, frankly, don't think that's going to be an  
19 issue at all once it is presented to a jury.

20 THE COURT: Is it your position that the price of  
21 titanium sponge was affected by this bribery scheme?

22 MR. BHACHU: Judge, we are not going to allege that  
23 the price of titanium was affected by this bribery scheme.  
24 We are not going to do that.

25 What we are going to do is we are going to prove

1 that the purpose of this criminal activity was to introduce  
2 into the United States goods that were obtained through  
3 bribery, otherwise known as contraband.

4 Introduction of contraband into the United States  
5 is something that the United States surely must be able to  
6 prosecute. The idea that we can't do that is baffling to me.

7 The idea that, for example -- and it seems to be  
8 the idea is that since the crime was not successful, the  
9 conspiracy did not succeed, we do not have jurisdiction.  
10 Even though the crime was aimed at the United States but it  
11 did not succeed, we do not have jurisdiction.

12 It's kind of like saying, if somebody tries to blow  
13 up a bridge somewhere in New York and they are stopped before  
14 they are able to blow up that bridge, so there is no effect  
15 on commerce, and they are all based outside the United  
16 States, that the United States government does not have  
17 jurisdiction to actually prosecute that case. Why? Because  
18 there was no successful interference with commerce in the  
19 United States.

20 Is that so? Obviously not.

21 The whole purpose of conspiracy law is to punish  
22 the agreement. That's why the jury instruction in this  
23 circuit says that we have to prove that the enterprise would  
24 affect commerce. We are going to be able to prove that it  
25 did affect commerce, but what we are required to prove is

1       that it would affect commerce.

2               With regard to the other issues that were raised  
3 with regard to extraterritoriality, I think I have covered  
4 most of what I think bears covering. I invite the Court to  
5 let me know if there is anything else it was concerned about.

6               I would say this, with regard to *RJR Nabisco*: It  
7 was a civil case. So the Supreme Court, when it's reviewing  
8 that case, it's probably looking at a huge civil complaint,  
9 some of the paperwork relating to that. There are different  
10 rules for civil complaints and criminal indictments. And in  
11 a criminal indictment, the notion that we have to set forth,  
12 basically, our entire case in a criminal indictment just  
13 simply is not true. There is not a different rule for  
14 pleading with regard to when somebody says, well, I think  
15 this case involves extraterritorial application of the  
16 statute, even though our indictment alleges domestic  
17 applications of the statute through the Travel Act and the  
18 money laundering statute.

19              Even the Second Circuit in the *RJR Nabisco* case,  
20 before it got to the Supreme Court, said that 1956(a)(2),  
21 which is what we have charged, that is a domestic application  
22 of the statute, because we are regulating the introduction  
23 and exit of funds from the United States.

24              So it's not even an extraterritorial application of  
25 the statute. So it can't be that, just because somebody

1 says, well, I think it might be extraterritorial, there is a  
2 different pleading requirement the government must adopt in  
3 advance of entertaining that sort of objection.

4 If there are no other questions about the  
5 extraterritorial application issue, I would like to briefly  
6 talk about due process and then let Mr. Robell speak about  
7 the FCPA argument.

8 THE COURT: Okay.

9 MR. BHACHU: I think the one thing before I get  
10 there is that I did want to emphasize, there was also kind of  
11 a preliminary statement that was made that both Mr. Firtash  
12 and Mr. Knopp -- at least as to Mr. Firtash -- have not been  
13 to the country.

14 There was some suggestion Mr. Knopp has not been  
15 here. I think the evidence will prove that's not true. I  
16 think the evidence will show that we will have wiretap phone  
17 calls where Mr. Knopp actually tells Mr. Firtash that he is  
18 traveling here, to the United States, to meet with  
19 representatives of Company A here in Chicago.

20 So I think it will be abundant from the evidence  
21 that -- abundantly clear from the evidence at trial that both  
22 Mr. Firtash and Mr. Knopp were aware of the nexus of Chicago  
23 to this crime.

24 We will also be able to prove that Mr. Knopp  
25 actually did travel here and meet with a representative from

1 Company A as well, to further the progress of the project.

2 So to the extent there is some suggestion that  
3 these guys are somehow clueless about Chicago's involvement  
4 in this case, that's just simply not so.

5 Mr. Firtash also was the one that gave  
6 authorization, the evidence will show, to enter into some of  
7 the agreements that were made with Boeing. And that's  
8 something that the evidence will show as well.

9 With regard to due process -- and this kind of ties  
10 into that argument as well. To answer the Court's question  
11 with regard to *Hijazi* on remand, the defendant lost on remand  
12 in *Hijazi*. Footnote 46 in our filing actually discusses the  
13 rationale of the district court on remand. But effectively,  
14 Mr. Hijazi lost, and the court found it reasonable to  
15 exercise jurisdiction.

16 We do continue to maintain that -- the Supreme  
17 Court has been loud and clear on this issue -- that an alien  
18 outside the United States does not have due process rights.  
19 This might be incidentally another reason to hold off until  
20 Mr. Firtash actually gets here.

21 But what the Supreme Court has said is that an  
22 alien located outside the United States cannot invoke the due  
23 process clause. I don't think there was any hemming and  
24 hawing by the Supreme Court when it made that holding. I  
25 don't think there is anything that would suggest that the

1 Seventh Circuit, when it said that that was probably right or  
2 seemed right to it in the *Kashamu* case, which we cite in our  
3 brief, didn't agree with that holding as well.

4 Now, with regard to the due process arguments, I  
5 think the idea that the conduct didn't take place in  
6 substantial part in the United States is mistaken. We do  
7 allege again and again conduct throughout the United States,  
8 from coast to coast, taking place -- transfers from  
9 California outside the United States, I believe, trips to New  
10 York, Washington, Chicago, North Carolina -- and then acts  
11 taken in furtherance of the conspiracy throughout the  
12 country.

13 We allege that the use of email servers throughout  
14 the United States also occurred, and that's going to figure  
15 prominently at trial.

16 We will find, I think, at trial that the evidence  
17 would show that one of the primary methods by which the  
18 conspirators communicated about the bribery activity was  
19 through email. There is going to be emails where the  
20 conspirators talk in explicit terms about how much in bribes  
21 had been paid. And to answer that question, bribes were paid  
22 to Indian public officials. The total allocated for that  
23 purpose was \$18-plus million. There are going to be charts  
24 that will show this is how much X official has received in  
25 terms of bribes.

1           Now, in many cases the emails are written in veiled  
2 terms -- sometimes not -- discussing the bribery activity.  
3 There is also the use of telephones, as I said before, using  
4 the telephone system here in the United States to communicate  
5 with coconspirators about bribery activity, about the  
6 prospect of being found out by law enforcement as well.  
7 Those are all things that are going to come into evidence.

8           So to say that there wasn't any activity in the  
9 United States is simply not so.

10           It's also not so to say that there was no intended  
11 effect in the United States. I have already talked about  
12 that at length. I'm not going to mention it again. But it's  
13 clear that this whole enterprise was geared toward getting  
14 sales of titanium to Company A, a significant amount of  
15 sales.

16           The evidence will also show that some of the  
17 material that wasn't going to be sold to Company A, there was  
18 some talk about introducing conspirators to other folks in  
19 the United States that might be able to take some of that  
20 supply as well. Local domestic steel -- not steel mills --  
21 processing mills that would process titanium. These are all  
22 things obviously that are not in the indictment but will be  
23 something we will be able to introduce at trial.

24           And again, this conduct is directed at significant  
25 U.S. interests. We talked already about the interest the

1 United States has in combatting organized crime. And this is  
2 a case that involves organized crime, even on the face of the  
3 indictment itself.

4 Now, there was some suggestion in some of the  
5 filings that, well, we didn't put in something about Russian  
6 organized crime in our indictment. We are obviously not  
7 required to approve or allege, like many of the other things  
8 we have been talking about, what the interest is of the  
9 United States in actually charging somebody. Can you imagine  
10 if we did that what the brouhaha would be? The reason we  
11 charged you is because X. We don't do that.

12 But in responding to the challenge that's made that  
13 says, well, there is no interest in the United States here,  
14 it is fair game for us to explain to the Court, to understand  
15 why it was this is important, from our perspective.

16 There is an importance in challenging and  
17 combatting organized crime. And when the executive, after  
18 being given the authority by the legislative branch to do so,  
19 exercises that authority and targets certain individuals that  
20 it understands are involved in organized crime, I would  
21 respectfully submit that's something that great deference  
22 should be paid to. We cite a couple cases to that effect,  
23 the *Youngstown* case and another one.

24 This is also an issue that, as I said before, has  
25 troubled the international community. There was a reference



1 to India. Why doesn't India do something? The case is that  
2 both India and the United States are signatories to the  
3 treaties that we have been talking about. The United States,  
4 obviously, was in a better position, in this instance, to  
5 carry that ball forward.

6 It's no criticism of India for us to say that we  
7 are going to do our best to live up to our international  
8 obligations. And to then say that, well, actually what we  
9 should really be focused on is the Restatement, Section 402,  
10 or whatever it is, and not the international treaty that the  
11 Senate approved, that the president suggested that this  
12 country enter into, which is the law of the land, that  
13 doesn't sound right to me.

14 In this situation, where our executive branch has  
15 made that decision and has carefully weighed what impact our  
16 decision may have on relations with other countries, which is  
17 what the job of the executive branch is -- the executive  
18 power includes foreign affairs power -- we have done that.

19 It's not, I think, for Mr. Firtash and Mr. Knopp to  
20 suggest that there is a Restatement that would suggest  
21 otherwise, even though, if you look at all the elements of  
22 that Restatement, they all point toward suggesting that  
23 prosecution is appropriate in this district.

24 If there are no further questions on those matters,  
25 Judge, I would turn over the podium to Mr. Robell, who I am

1       sure is ready to --

2               THE COURT: Hold forth.

3               MR. BHACHU: -- hold forth. Yes, Judge.

4               Thank you.

5               MR. ROBELL: Good afternoon, your Honor.

6               THE COURT: Good afternoon.

7               MR. ROBELL: Jonathan Robell from the fraud section  
8       at DOJ, also on behalf of the United States.

9               Thank you for the opportunity to address the FCPA  
10       portions of the argument.

11              The defendants oversaw a U.S. bribery scheme with  
12       the ultimate goal of doing business with a company based here  
13       in Illinois. The scheme involved a domestic concern, as that  
14       term is defined in the FCPA; actions in the United States in  
15       furtherance of the scheme; and the payment of bribes to  
16       foreign officials in India.

17              Whether or not the defendants were in the United  
18       States themselves during the conspiracy doesn't alter their  
19       criminal liability for the actions of the conspiracy.

20              Now, the defendants take the position that  
21       high-level members of a transnational conspiracy, like the  
22       one that's been alleged here, cannot be criminally liable as  
23       conspirators or as aiders and abettors when it involves a  
24       violation of the FCPA, but that's a position that runs  
25       contrary to long-standing principles of how Sections 371 and

1 2 are applied to other actions by Congress, and it's contrary  
2 to how the Supreme Court and the Seventh Circuit have  
3 described the exceptions to that presumption of conspirator  
4 and accessory liability.

5 For all these reasons, your Honor, the motion to  
6 dismiss Count V should be denied.

7 The presumption -- the baseline presumption -- and  
8 I think the defendants said that they agreed with this -- is  
9 that conspiratorial and accessorial liability apply.

10 Where we part ways, I think, with the defendants is  
11 that -- is on *Pino-Perez*, the Seventh Circuit decision.

12 What *Pino-Perez* said, in the context of aiding and  
13 abetting, is that Congress doesn't have to think about this  
14 stuff when it writes new statutes, because it automatically  
15 kicks in.

16 The same logic applies to 371. The Seventh Circuit  
17 said this automatically kicks in unless the statute fits  
18 within a very narrow exception.

19 I would respectfully disagree with the defendants'  
20 interpretation of *Pino-Perez*. I think one quote really sums  
21 that up. The court there said, "Doubt about Congress'  
22 intentions must be resolved in favor of aider and abettor  
23 liability."

24 The court went on to say that there must be "an  
25 affirmative legislative policy to create an exemption from

1 the ordinary rules of accessorial liability."

2 We don't have that here, your Honor.

3 What *Pino-Perez* also said is that if there is any  
4 doubt about Congress' intentions, the presumption is that  
5 liability applies.

6 So the defendants are saying that this all doesn't  
7 apply to them, because they are too high-level, essentially,  
8 to be agents of a domestic concern. If they were agents of a  
9 domestic concern, there is really no question that they could  
10 be charged as principals under the FCPA.

11 But because they were, as alleged in the  
12 indictment, the ringleader and a manager of the scheme, they  
13 are exempted from the normal rules of conspiracy and  
14 accessory liability. They hang their hat on the *Hoskins*  
15 decision from the District of Connecticut.

16 The *Hoskins* decision is currently on appeal to the  
17 Second Circuit. But the key difference between *Hoskins* and  
18 this case goes back to *Pino-Perez*.

19 What the Seventh Circuit did in *Pino-Perez* is, they  
20 addressed the case that *Hoskins* relied on extensively, *United*  
21 *States v. Amen*, from the Second Circuit.

22 The court *en banc* in *Pino-Perez* looked at the  
23 Second Circuit's reasoning in *United States v. Amen* and  
24 specifically said, we disagree with the reasoning. We don't  
25 believe that the *Amen* court correctly applied *Gebardi* and the

1 principles of *Gebardi* to the drug kingpin statute.

2 In finding that the *Gebardi* exception did not apply  
3 in the Seventh Circuit to the drug kingpin statute, I don't  
4 think it was as limited an opinion as the defendants have  
5 made it out to be.

6 What the *Gebardi* exception says is that if a crime  
7 requires two parties but the statute doesn't condemn one of  
8 the parties that acquiesces to the crime or consents to the  
9 crime, that's evidence of congressional intent to exclude  
10 that consenting or acquiescing party from liability. And the  
11 government can't get around that by charging conspiracy or  
12 aiding and abetting.

13 The *Gebardi* decision itself, in 1932, said that it  
14 was a limited exception.

15 Fast-forward to 2016, last term, the Supreme Court  
16 reaffirmed the narrowness of this *Gebardi* exception in *United*  
17 *States v. Ocasio*.

18 What the *Ocasio* court said was that *Gebardi* only  
19 applies when "a person's consent or acquiescence is inherent  
20 in the underlying statute."

21 The defendants, in their papers, minimize *Ocasio* as  
22 merely a reiteration of the limited reading of *Gebardi* that  
23 other courts have applied. But that's exactly the point,  
24 your Honor. *Gebardi* is limited. It's limited to what's  
25 become known as the necessary parties analysis, which

1     *Pino-Perez* also touched on.

2             *Pino-Perez* said there were three general exceptions  
3 to the presumption that conspirator and accessory liability  
4 apply. The first two are not at issue here. It's when a  
5 statute is designed to protect a class of person or when the  
6 purported defendant is a victim of the crime.

7             What's at issue here is when the crime necessarily  
8 involves a category of person that would include the  
9 defendant.

10            The defendants also mentioned the *Castle* case, your  
11 Honor. The *Castle* case is from the Fifth Circuit, and it's  
12 the one Court of Appeals that has applied *Gebardi* and the  
13 principles of *Gebardi* to the FCPA specifically.

14            What *Castle* said is that you can't charge the  
15 bribe-taker in an FCPA transaction, if you will, as a  
16 conspirator, because the bribe-taker is a necessary party to  
17 an FCPA transaction, and yet Congress chose not to  
18 criminalize the actions of the bribe-taker in the FCPA  
19 itself.

20            In every bribery scheme, of course, there is a  
21 bribe-taker, or at least an intended bribe-taker. Contrast  
22 that with the defendants' position. They are in no way  
23 necessary parties to the bribery scheme that's been alleged  
24 in the indictment. There is no requirement that a  
25 conspiracy, like the one alleged in the indictment, would

1 have to have foreign nonagent participants.

2 The defendants don't say, because they can't, that  
3 they are necessary parties to any violation of the FCPA.  
4 They just say that, because they fall within a category of  
5 persons that was not enumerated in the statute itself, they  
6 get a pass on conspiring with foreign officials. But that's  
7 not the law.

8 Enumeration does not change the necessary parties  
9 analysis. And numerous other criminal statutes enumerate  
10 classes of persons, just the way that the FCPA does, but  
11 there is no dispute that the normal principles of conspiracy  
12 and aiding and abetting apply to those statutes.

13 At bottom, your Honor, the issue here is that the  
14 FCPA does not confer immunity on people like the defendants.  
15 "Immunity" is the term that the Supreme Court used in  
16 *Gebardi*. It said that the general conspiracy statute does  
17 not withdraw the immunity conferred, in that case, by the  
18 Mann Act.

19 There is no evidence in the text or structure of  
20 the FCPA that Congress intended to immunize high-level  
21 foreign nationals who orchestrate a bribery scheme.

22 In fact, it's just the opposite. The FCPA  
23 expansively applies to the bribe-paying side of an offense,  
24 and it encompasses a wide array of individuals who act in  
25 concert with a domestic concern or any other entity connected

1 to the United States, without regard to their nationality.

2 The statute is silent as to conspirator and  
3 accessory liability, but as *Pino-Perez* makes clear, that's  
4 because it doesn't have to say anything about that. Those  
5 provisions automatically kick in whenever Congress writes a  
6 new statute.

7 To the extent it's necessary, your Honor, to  
8 consider the legislative history of the FCPA, we see the same  
9 breadth of purpose in the legislative history, both in the  
10 original enactment of the FCPA in 1977 and in the expansion  
11 of the statute in 1998 to comply with the OECD Convention.  
12 Both times Congress said that it intended this to reach  
13 foreign bribery broadly. It intended to include conspiracy,  
14 aiding and abetting, causing incitement. And it said that  
15 Congress intended to reach any act that was committed in  
16 whole or in part in U.S. territory.

17 That's exactly what we have here, your Honor. We  
18 have a conspiracy that took place in part in the United  
19 States. And therefore, it's a domestic application of the  
20 conspiracy statute, as Mr. Bhachu said. And the  
21 extraterritorial aspect of the defendants' argument really  
22 doesn't apply.

23 Subject to the Court's questions, your Honor, I  
24 would ask the Court to deny the motion to dismiss Count V.

25 THE COURT: I don't have any further questions



1 specifically for you.

2 I have got a question generally about whether and  
3 to what extent we can get any more information on what's  
4 going on in Austria.

5 It sounds like, from what Mr. Bhachu says, it's a  
6 discretionary appeal. They don't have any clear rules on  
7 when they will even let us know if they are taking it.

8 Is that right?

9 MR. BHACHU: Judge, I think the way I can answer  
10 that is that our Office of International Affairs occasionally  
11 will have contact with their counterparts in Austria. And  
12 periodically they ask for an update as to what's going on.  
13 Sometimes we just don't get any new information.

14 What I can endeavor to do is ask our contact in  
15 Washington to reach out to the Austrian officials and ask if  
16 there is an update in relation to the Austrian proceedings.

17 THE COURT: Your sense that the Austrian Ministry  
18 of Justice isn't sending Mr. Firtash over here until that's  
19 concluded rests, it seems like, in part on the fact that  
20 since February they haven't done so.

21 MR. BHACHU: Right. I would be the one to know if  
22 something was going to happen on that front, because we would  
23 have to actually make the arrangements to get it done.

24 So it's not like they are going to -- the way that  
25 will work is, it would probably require U.S. law enforcement

1 to be ready to receive him when he is tendered to U.S. law  
2 enforcement. So there is no question that we would have to  
3 be aware of a plan to do that.

4 Of course, as your Honor knows, just recently there  
5 was the Spanish extradition, which is not necessarily final  
6 yet. And what we were told is that no decision will be made  
7 with regard to extradition to either country until a final  
8 determination is made as to the Spanish extradition. And  
9 then the Minister of Justice makes an additional  
10 determination about which extradition should take precedence.

11 Now, the appeal -- there is no appeal that, I  
12 think, has been filed so far, as it relates to the Spanish  
13 extradition. If that is not appealed, then that may  
14 accelerate matters with regard to our case.

15 But in terms of this being ripe, as I said before,  
16 if it was the case that he was going to be turned over to us  
17 today or tomorrow, I would know about it. And we haven't  
18 gotten any indication whatsoever that that's so.

19 THE COURT: And the Spanish extradition effort has  
20 resulted in an order that he be extradited?

21 MR. BHACHU: No. To be clear, the Spanish  
22 extradition -- the request for extradition to Spain was  
23 denied by the lower court.

24 THE COURT: But that's on appeal.

25 MR. BHACHU: No appeal, so far as I know, has been

1 filed yet. So I don't know if that appeal will be filed or  
2 not. That's a decision, obviously, that I am not privy to.

3 But if it -- for example, if there is no appeal  
4 that's filed in the next couple of days, there still remains  
5 the Austrian appeal on our extradition proceeding.

6 THE COURT: Right.

7 MR. BHACHU: And then also -- as I think I wrote in  
8 our filing, there is also some indication that the defendant  
9 intends to appeal to the European Court of Human Rights. And  
10 I know that wasn't mentioned before, but I don't know what  
11 impact, to be honest with you, that will have on the  
12 extradition of the defendant.

13 THE COURT: That court would trump whatever happens  
14 in Austria, right? Or would it?

15 MR. BHACHU: I have no idea. There may be somebody  
16 in the room that does, but I don't know exactly how that's  
17 going to work.

18 THE COURT: It may or may not be the same person  
19 who knows what titanium sponge is.

20 MR. BHACHU: I think the person that will most --  
21 that would best be able to answer that is probably the  
22 Austrian Ministry of Justice.

23 But I would again say, given the fact that  
24 Mr. Firtash is not here, given the fact that I would be  
25 probably one of the first people to know that he was

1 coming --

2 THE COURT: If he were on his way, right.

3 MR. BHACHU: -- that speaks volumes.

4 THE COURT: All right. Thank you.

5 I assume that the defendants want to say something  
6 briefly in reply. You are obviously under no obligation.

7 MR. WEBB: Your Honor, you have been extremely  
8 patient.

9 THE COURT: Well, it's an interesting case.

10 MR. WEBB: I have a -- let me just ask you a  
11 question.

12 I have -- I do have things I want to say. Would it  
13 be possible just to continue this for another -- I could go  
14 on for another 45 minutes, but they just said things that I  
15 really want to address about venue.

16 I will do whatever your Honor wants. I will try to  
17 be as concise as I can. But would it be possible just to  
18 give us another hearing in a day or two, and I will -- let me  
19 tell you what I think the status -- can I talk about what is  
20 the status in Austria, just for a second, as best I know?

21 THE COURT: Sure.

22 And the short answer to your question is, I am  
23 around all week. I don't know whether everybody else minds  
24 coming back, but I wouldn't mind coming back another day on  
25 this.

1 MR. WEBB: Thank you.

2 THE COURT: All right.

3 MR. WEBB: Thank you very much.

4 I have an Austrian lawyer here, and here is what I  
5 believe the status is.

6 There is no question that Mr. Firtash is at  
7 significant risk of being extradited. Whether it's in the  
8 next few weeks or few months, nobody knows.

9 THE COURT: Right.

10 MR. WEBB: Here are the two things that I know for  
11 certain: The Austrian Supreme Court has not accepted to hear  
12 this extraordinary writ; number two, there is no stay in  
13 place.

14 And because there is no stay, the Austrian Ministry  
15 of Justice -- there is nothing that prevents the Ministry of  
16 Justice from extraditing Mr. Firtash tomorrow, under the law  
17 of Austria.

18 That's the status of where we are on the appeal in  
19 the court system.

20 Until August 29th, we had another layer of  
21 protection because of the Spanish extradition proceeding.

22 THE COURT: Right.

23 MR. WEBB: However, because the Spanish extradition  
24 now has been denied, there are no longer competing  
25 jurisdiction requests.

1           So if the Austrian ministry -- or the Austrian  
2 public prosecutor does not appeal that, then there is nothing  
3 that would prevent the Austrian Ministry of Justice from  
4 extraditing Mr. Firtash in very short order.

5           Maybe the Austrian Ministry of Justice would decide  
6 to wait to see for a few weeks as to what the Supreme Court  
7 does. I don't think anyone knows the answer to that  
8 question, but that's why --

9           THE COURT: But it's your view the only thing that  
10 stood in the way -- stood between Mr. Firtash and extradition  
11 from February until now is the fact that Spain had a  
12 proceeding.

13           MR. WEBB: That is correct. Under the law, that is  
14 correct.

15           Now, also, your Honor, if I would have come here  
16 two years ago and teed up this motion, under the law, you  
17 would have decided the motion at that time. I mean, there is  
18 nothing about the fact that the Austrian extradition  
19 proceedings are going on that would mean that you shouldn't  
20 rule.

21           I didn't come here because I thought, if we are  
22 going win extradition, why do that to this Court? But now we  
23 are at great risk. That's why I am here.

24           Could I ask to see whether there is some day later  
25 this week we could ask for another 45 minutes?

1 THE COURT: I think I could say yes to that request  
2 on any day other than Thursday.

3 MR. WEBB: Would it be possible to do it on Friday?  
4 Would that be consistent with your schedule?

5 THE COURT: Sure. I will be around all day Friday.

6 MR. BHACHU: I think that will be fine with the  
7 government, Judge.

8 THE COURT: Let me just look at the --

9 MR. BHACHU: Mr. Robell may not be able to attend,  
10 but I will try to do my best to --

11 THE COURT: And if you want to telephone in, we  
12 will let you do that.

13 Let me just take a look at the calendar for Friday.  
14 How about 10:45?

15 MR. WEBB: Yes, your Honor.

16 THE COURT: I will see you then.

17 MR. BHACHU: Very good, Judge. Thank you.

18 THE COURT: All right. Thank you.

19 (An adjournment was taken at 4:40 p.m.)

20 \* \* \* \* \*

21 I certify that the foregoing is a correct transcript from the  
22 record of proceedings in the above-entitled matter.

23 /s/ Frances Ward September 13, 2017.  
24 Official Court Reporter  
25 F/j